

**INFORMATION PAPER FOR THE  
BUSINESS ADMINISTRATION COMMITTEE**

**Draft Fourth Edition of Contracting Manual**

**December 2012**

# Purpose

The purpose of this paper is to present the Business Administration Committee with recommended changes to the Metropolitan Washington Airports Authority's Contracting Manual in the form of a Draft *Fourth Edition*

No formal action is requested at this time to approve recommended changes

Management will request Committee consent to proceed with due diligence and solicit comments on the recommended changes

# Background

In October 2012, the Board of Directors approved issuance of the Third Edition of the Contracting Manual, primarily incorporating requirements of the Federal Transit Administration

On November 1, 2012, the US DOT Office of Inspector General (OIG) released a report containing 12 specific recommendations, four of which recommended various enhancements of the Contracting Manual

Staff has developed a draft Fourth Edition of the Contracting Manual that incorporates recommendations of the OIG

# Inspector General's Recommendations Specific to Contract Manual

## Recommendation 1

Provide Quarterly Acquisition Reports to the Board of Directors (BOD) and Department of Transportation (DOT)

## Recommendation 2

Implement a Plan with Milestones to Revise Contracting Policies & Procedures to Reflect Federal and Other Best Practices

## Recommendation 3

Clarify and Enforce Current Contracting Policies and Procedures

## Recommendation 5

Establish Policies and Procedures for Procurement Integrity

# Draft Revisions

## *Recommendation 1 - Provide Quarterly Acquisition Reports to the Board of Directors (BOD) and Department of Transportation (DOT)*

- Annual Acquisition Forecasts / Quarterly Reports
  - In addition to the annual acquisition forecasts, the manager of the Procurements and Contracts Department shall present to the Board and to the Secretary of Transportation a quarterly procurement report that lists all acquisitions made during that quarter, including the type of acquisition made, the vendor the contract was awarded to, the dollar amount of the award, whether full and open competition was used, and if not, the authority under which it was not
  - Delegations of contracting authority will be reported within the quarterly report

# Draft Revisions

*Recommendation 2 - Implement a Plan with Milestones to Revise Contracting Policies & Procedures to Reflect Federal and Other Best Practices, and*

*Recommendation 3 – Clarify and Enforce Certain Contracting Policies and Procedures*

Revisions eliminate concept of “Categorical Exceptions” which authorized certain delegations with respect to procurement activity

# Draft Revisions

## *Recommendations 2 and 3, Continued*

Establishes four primary types of procurements:

1. Full and Open Competition
2. Full and Open Competition with Exclusions
3. Full and Open Competition Using Contracts  
Competitively Procured by Other Governmental Units
4. Other Than Full and Open Competition
  - *All of this type will require Board approval if over \$200,000*

# Draft Revisions

## *Recommendations 2 and 3, Continued*

- **Full and Open Competition with Exclusions**
  - **Local Disadvantaged Business Enterprise – 100% Set-Aside:** The Airports Authority may set aside contracts, when appropriate, for competition only among LDBE firms. While competition for such contracts is limited to LDBE firms, all LDBE firms able to complete the scope of work may compete
  - **Airport Security:** For security reasons, distribution of some solicitations relating to airport security and information technology procurements must be controlled and issued only to Airports Authority-approved firms



# Draft Revisions

## *Recommendations 2 and 3, Continued*

- **Full and Open Competition Using Contracts Competitively Procured by Other Governmental Units**
  - At times, the required goods, services or construction are able to be obtained by utilizing a government-awarded contract previously awarded using competitive procedures
  - Sponsoring organizations may include the Metropolitan Washington Council of Governments (COG), the General Services Administration and other federal, state, county or local government agencies



# Draft Revisions

## *Recommendations 2 and 3, Continued*

- **Other than Full and Open Competition**

- The following are the categories of circumstances in which other than full and open competition may be used with proper justification.
  - » *Urgent and Compelling Needs:* The need for goods, services or construction is so urgent and compelling that the Airports Authority would be seriously injured financially or otherwise
  - » *Airline Improvements to Airport Facilities:* The procurement of construction services by an airline tenant to deliver specifically identified and approved improvements to airport facilities is in the best interests of the Airports Authority
  - » *Sole Source:* There is only one responsible or one practicable source for required goods, services or construction

***All of this type over \$200,000 require Board approval***

# Draft Revisions

## *Recommendations 2 and 3, Continued*

- Task Order Contracts
  - Fair opportunity to all firms under multi-contract task order
  - Procedures shall be established by Procurement and Contracts Department
- Change Orders
  - Any change in price or terms may be authorized by the Contracting Officer only after reviewing the circumstances and making the determination that the change falls within the scope of the contract



# Draft Revisions

## *Recommendations 2 and 3, Continued*

- “Sole source negotiation” procurements - published
  - In excess of \$200,000, notice prior to contract award will be published on the Airports Authority’s website, describing the item to be acquired, stating that the Airports Authority has determined that only one source of the item is practicably available, identifying that sole source and stating the date on which the contract will be awarded
  - Justifications must be made publicly available by posting on the Airport Authority website within 14 days of the contract award and must remain available for a minimum of 30 days



# Draft Revisions

## *Recommendation 5 -*

## *Establish Policies and Procedures for Procurement Integrity*

- Authorized Contracting Offices
  - Procurement of all goods and services and construction shall be undertaken by the Central Procurement Office and the Airports' Materials Management Divisions
- Ethics in Procurement
  - Revised section of conduct directs the user back to the Authority-wide Ethics Policy
  - All offerors shall certify that they have no information concerning code of ethics violations by an airport employee or Director



## Next Steps

- December 2012 Business Administration Committee Meeting
  - Provide Information Paper with draft Fourth Edition of Airports Authority Contracting Manual
  - Consent to release manual for comment period
- February 2013 Business Administration Committee Meeting
  - Approval of draft Fourth Edition of Airports Authority Contracting Manual, incorporating comments as appropriate, and Committee recommendation to Board for adoption on same meeting date
- February 2013 Board of Directors Meeting
  - Adoption of Fourth Edition of Airports Authority Contracting Manual

# **INFORMATION PAPER FOR THE BUSINESS ADMINISTRATION COMMITTEE**

## **DRAFT REVISIONS TO AIRPORTS AUTHORITY CONTRACTING MANUAL**

**DECEMBER 2012**

### **PURPOSE**

Staff is presenting to the Business Administration Committee for informational purposes a set of revisions to the Metropolitan Washington Airports Authority's Contracting Manual (redline version attached). At this time, staff seeks the Committee's consent to publish notice of the revisions and invite comment from the public and certain federal agencies. Staff's intent is to report on any comments received, and to present the draft Manual revisions, to the Committee and Board at the February 2013 meeting.

### **BACKGROUND**

In October 2012, the Board of Directors approved an earlier set of draft revisions to the Contracting Manual. At the time of that approval, the Department of Transportation's Office of the Inspector General (OIG) was conducting an organization wide audit of the Airports Authority. This audit began in early 2011; the OIG final report was released on November 1, 2012 (OIG Report). Within the OIG Report were 12 recommendations that the Airports Authority should address, several of which were related to procurement activity and procedures.

Staff has reviewed the OIG procurement recommendations and is presenting revisions to the Manual that implement those OIG recommendations. The key revisions are as follows;

- 1) Two Categories of Procurement: Categorical Exceptions have been eliminated and under the revisions, all procurements will fall into one of two categories – "full and open competition" and "other than full and open competition." Under the category of Full and Open Competition staff has recommended two additions:
  - a. Full and Open Competition
    - i. Full and Open Competition after exclusions
      1. LDBE: The Airports Authority may set aside contracts, when appropriate, for competition only among LDBE firms. While competition for such contracts is limited to LDBE firms, all LDBE firms may compete for them
      2. Airport Security: For security reasons, distribution of some solicitations relating to airport security and information technology procurements must be controlled and issued only to Airports Authority-approved firms.
    - ii. Full and Open Competition by Others

1. At times, the required goods, services or construction are able to be obtained by utilizing a government-awarded contract previously awarded using competitive procedures. Sponsoring organizations may include the Metropolitan Washington Council of Governments (COG), the General Services Administration and other federal, state, county or local government agencies.
- b. Other Than Full and Open Competition
  - i. The Airports Authority normally will obtain full and open competition when acquiring or procuring goods, services and construction. The following are the categories of circumstances in which other than full and open competition may be used with proper justification.
    1. Urgent and Compelling Needs: The need for goods, services or construction is so urgent and compelling that the Airports Authority would be seriously injured financially or otherwise.
    2. Airline Improvements to Airport Facilities: Procurement of construction services by an airline tenant to deliver specifically identified and approved improvements to airport facilities.
    3. Sole Source: There is only one responsible or one practicable source for required goods, services or construction. For awards in excess of \$200,000, notice prior to contract award will be published on the Airports Authority's website, describing the item to be acquired, stating that the Airports Authority has determined that only one source of the item is practicably available, identifying that sole source and stating the date on which the contract will be awarded. Additionally, justifications must be made publicly available by posting on the Airports Authority website within 14 days of the contract award and must remain available for a minimum of 30 days.
  - 2) Authorized Contracting Offices: To address the OIG recommendation, the revisions provide that all procurements of goods and services and construction shall be undertaken by the Central Procurement Office and the Airports' Materials Management Divisions.
  - 3) Ethics in Procurement: At the October, 2012 Board of Directors meeting, the Board adopted a new Airports Authority Ethics Policy for both the Board and employees. These policies offer guidance on how all members of the Airports Authority should conduct themselves while they are engaging in Airports Authority business or activities. The OIG Report provided further recommendations for how procurement activity should be managed ethically. Those changes, which detail how and for whom procurement activity should be directed, have been incorporated into the draft manual. Additionally, revisions include a section that directs the user back to the Authority-wide Ethics Policy and also discusses other ethical procurement activities.
  - 4) Task Orders: Task orders are issued under task contracts. These are contracts which are entered when the Airports Authority is not certain about the quantity of work that will be required to be performed under the contract, or when that work will need to be undertaken. On occasion, a single task contract is issued; on other occasions, multiple task contracts are entered with different contractors. When work that is covered by a task contract becomes necessary, a task order is issued to the contractor that defines the scope



of work and authorizes the work to be performed. Due to the nature of work performed by the Airports Authority, we utilize several types of task order contracts. These task order contracts are competitively procured, however the OIG had concerns that the actual assignment of work under a task order was not fully documented and justified, and that the Airports Authority had not documented that a fair opportunity was given to all holders of a task contract. The Fourth Edition will provide additional language concerning required sound justification for the issuance of task orders as well as language relating to the provision of fair opportunities to task contractors to perform task work. This section of the Fourth Edition will be augmented by a procedure guide to be issued by the Procurement and Contracts Department.

- 5) Change Orders & Contract Modifications: Here, the OIG Report recommends that the Airports Authority provide greater justification in the change order and contract modification approval process. Additionally, the Procurement and Contracts Department will develop and issue guidance on the proper analysis to undertake when reviewing a change order or modification.
- 6) Planning and reporting: Also recommended by the OIG was increased planning of acquisitions and reporting. To address this recommendation, the revisions provide for the manager of the Procurements and Contracts Department to present to the Board and to the Secretary of Transportation a quarterly acquisition report that lists acquisitions made during that quarter, including the type of acquisition made, the vendor the contract was awarded to, the dollar amount of the award, whether full and open competition was used, and if not, the authority under which it was awarded, Delegations of contracting authority will be reported within the quarterly report. The December 2012 report will only include the 2013 first quarter forecast, with staff presenting all recommended reports to the Business Administration Committee in February 2013 following the end of the 2012 fourth quarter.

It is the Airports Authority practice when revising the Contracting Manual to provide a public comment period prior to presenting the revisions to the Board. With consent from the Business Administration Committee, immediately following the December 12 meeting, staff will provide public notice of the attached revisions to the Manual and invite comment. Staff also will forward the revisions for comment to the Federal Transit Administration, Federal Aviation Administration, US Government Accountability Office, and Department of Transportation, Office of Inspector General. It is the intent of staff to present any public comments, along with the Manual revisions, to the Business Administration Committee and the Board at the February 2013 meeting.

## **CONCLUSION**

Following concurrence by the Committee, the proposed Fourth Edition will be issued immediately for a public comment period. The current timeline requests that the Business Administration Committee approve the draft Fourth Edition incorporating comments as appropriate and recommend adoption by the Board of Directors. Following the Committee

recommendation, the Board will consider the Fourth Edition at the same meeting date in February.

Prepared by

Office of Finance  
Procurement and Contracts Department  
December 2012

Attachment: Draft Fourth Edition, Airports Authority Contracting Manual

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## METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

### CONTRACTING MANUAL – ~~THIRD~~FOURTH EDITION

#### **FOREWORD**

This is the ~~third~~fourth edition of the Metropolitan Washington Airports Authority's *Contracting Manual*– (*Manual*). This *Manual* sets forth the contracting policies and procedures that the Airports Authority uses to acquire goods and services with a total dollar commitment currently set at over \$50,000 and for all construction contracting procedures. The *Manual* also includes, in Chapter 6, contracting procedures for award of concession contracts and, in ~~a new~~ Chapter 10, contracting procedures for award of Federal Transit Administration grant supported contracts. This *Manual* applies to procurement of goods, services and construction by the Airports Authority. It also applies when the Airports Authority contracts for concessions or for contracts to manage concessions at Reagan National and Washington Dulles International Airports or along the Dulles Toll Road. The *Manual* ~~does not address procedures for award of to contracts such as~~ air carrier agreements, air carrier cooperative marketing agreements, space and land lease agreements, rating agency agreements and other agreements ~~relating to revenue producing activities that do not fall within the *Manual's* scope.~~

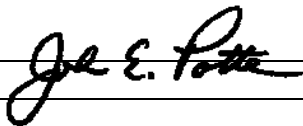
The Materials Management Divisions at Ronald Reagan Washington National Airport and Washington Dulles International Airport are responsible for the acquisition of goods, services and construction that involve a dollar commitment that ~~does~~do not exceed \$50,000. Procedures for acquisitions by those offices are in the Airports Authority's *Airport Purchasing Policies and Procedures Manual*.

This ~~third~~fourth edition of the *Contracting Manual* is effective ~~October 17, 2012~~ \_\_\_\_\_, 2013.

The Manager, Procurement and Contracts Department, is responsible for publication and distribution of this *Manual* to Airports Authority division managers and above and to the public as requested. It is also available on the Publications Section of the Airports Authority's website at [www.mwaa.com](http://www.mwaa.com). Inquiries should be directed to-

Metropolitan Washington Airports Authority  
Manager, Procurement and Contracts Department  
1 Aviation Circle  
Washington, DC 20001-6000  
Phone (703) 417-8660  
E-Mail Address: [contracting@mwaa.com](mailto:contracting@mwaa.com)

Numerous other Airports Authority points of contact are included in Appendix B.



John E. Potter  
President and Chief Executive Officer

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## **INTRODUCTION AND SCOPE OF CONTRACTING MANUAL**

The Metropolitan Washington Airports Authority (hereinafter referred to as the "Airports Authority") is a public body, corporate and politic, created by joint legislation establishing an interstate compact between the Commonwealth of Virginia and the District of Columbia<sup>1</sup>. As authorized by federal law in the Metropolitan Washington Airports Act of 1986, Ronald Reagan Washington National (Reagan National) and Washington Dulles International Airports (Dulles International) have been leased to the Airports Authority by the United States. The lease agreement provides:

"In acquiring by contract supplies or services for an amount estimated to be in excess of \$200,000, or awarding concession contracts, the Airports Authority shall obtain, to the maximum extent practicable, full and open competition through the use of published competitive procedures. By a vote of ~~seven~~nine<sup>2</sup> members, the Airports Authority may grant exceptions to the requirements of this paragraph."

The Airports Authority's mission is to develop, promote, and operate safely Ronald Reagan Washington National and Washington Dulles International Airports, continually striving to improve our efficiency, customer orientation, and the level of air service offered at the two airports. Also, the Airports Authority supports the development and efficient operation of the Dulles Corridor road and Metrorail operations. Under 2012 amendments to the Virginia and District of Columbia Acts (see note 1), the Airports Authority is governed by a Board of Directors consisting of seven members appointed by the Governor of Virginia, four members appointed by the Mayor of the District of Columbia, three members appointed by the Governor of Maryland, and three members appointed by the President of the United States.<sup>3</sup>

To accomplish its mandate, the Airports Authority enters into a wide range of contractual relationships for the acquisition of goods, supplies, construction, and technical and administrative services: for the Airports Authority, including Reagan National and Washington Dulles International Airports, the Dulles Toll Road, and, until completed, the Silver Line Metrorail extension to Dulles. Acquisitions range from office supplies to heavy mobile equipment, from fuel oil and gasoline to replacement parts for air conditioning systems, from minor repairs to major construction and various professional consulting services. The Airports Authority also enters into a variety of revenue-generating concessions contracts to provide necessary and desirable goods and services to ~~airport users, and to help defray the costs of operating and maintaining the airports.~~ In addition, the Airports Authority enters into contractor relationships to enhance road and rail to provide access to the airports the traveling public. This Manual applies to procurement of goods, services and construction by the Airports Authority. It also applies when the Airports Authority contracts for

<sup>1</sup> 1985 Virginia Acts of Assembly, Ch 598, as amended, Va Code §5-502 et seq. and District of Columbia Regional Airports Authority Act of 1985, D.C. Law 6-67, as amended, DC Code §9-901 et seq. The Virginia and District of Columbia Acts contain several provisions relating to contracting by the Authority including the express grant to the Authority of power "to make and enter in to all contracts and agreements necessary or desirable to the performance of its duties, the proper operation of the airports and the furnishing of services to the traveling public and airport users, and such contracts shall be exclusive or limited when it is necessary to further the public safety, improve the quality of service, avoid duplication of services, or conserve airport property and the airport environment." Va. ~~Act, ob cit. See Code §5-13; xxx;~~ D.C. ~~Act, ob cit. See 6-13.~~ Code §9-9xx.

<sup>2</sup> In light of the 2012 amendments to the Virginia and District of Columbia Acts described above in the text, the lease is being revised to provide that a vote of nine, rather than seven, Board members is needed to grant an exception from the requirement of "full and open competition."

<sup>3</sup> The Authority is not a federal agency. For a more detailed discussion of the Authority, see the Preface to Metropolitan Washington Airports Regulations, which can be accessed at [www.mwaa.com](http://www.mwaa.com) under "Publications."

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concessions or for contracts to manage concessions at Reagan National and Washington Dulles International Airports or along the Dulles Toll Road. Other agreements, such as air carrier agreements, air carrier cooperative marketing agreements, space and land lease agreements, and rating agency agreements, do not fall within the *Manual's* scope.

Publication of this ~~third edition~~ Revised Fourth Edition to the Manual fulfills the requirement as set forth in the lease between the Airports Authority and the U.S. Department of Transportation for “published competitive procedures,”<sup>4</sup> Procedures and ~~incorporates~~ guidance issued by the Airports Authority’s Office of Procurement and Contracts supplement certain aspects of this Manual, as referenced herein. Airports Authority employees are required to comply with the provisions of this Manual, and failure to do so may result in discipline. Chapter 10 of this revised Manual contains provisions reflecting procurement circulars published by the Federal Transit Administration (FTA) applicable to grantees of FTA financial assistance.

The Board of Directors may grant exceptions to the requirement in the lease that the Airports Authority “obtain to the maximum extent practicable, full and open competition” ~~on a case-by-case basis. In addition, this Manual includes the categorical exceptions to obtain.” This revision~~ to the ~~maximum extent practicable. Manual limits use of the limited competition exception to full and open competition as previously approved by the Board for implementation by that was included in the President and Chief Executive Officer when necessary and appropriate.~~ 2d edition. Special conditions may make it necessary to make material changes to the procedures in this Manual on a case-by-case basis and as authorized by the Board of Directors. In the event such exceptions are made, they will be identified as such in the solicitation which should be read with care prior to submission of a proposal, quotation or bid.

The Airports Authority is committed to maximizing the competitive procurement process and ensuring that its contracting actions are guided by and carried out in accordance with all applicable law including the statutes establishing the Airports Authority, the lease with the United States, the bylaws of the Airports Authority, sound contracting methods, and the highest standards of integrity and ethical conduct. The Metropolitan Washington Airports Authority Directive GC-001, entitled “Code of Ethics for Employees,” is available by contacting the Manager, Procurement and Contracts Department as shown in Appendix B.

The Airports Authority is also committed to full participation in its contracting programs by Disadvantaged Business Enterprises, which include minority and women-owned firms, and by Local Disadvantaged Business Enterprises, which is focused upon small, including minority and women-owned, businesses located within a 100-mile radius of the District of Columbia zero-mile marker.

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<sup>4</sup> ~~Prior to the effective date of the first edition of the Contracting Manual, this requirement was met by the Authority’s Contracting Policies and Procedures Manual issued December 1, 1993 and by individual solicitations.~~

<sup>5</sup> ~~Prior to the effective date of the first edition of the Contracting Manual, this requirement was met by the Authority’s Contracting Policies and Procedures Manual issued December 1, 1993, and by individual solicitations.~~

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**Information for Users of this Manual**

Definitions for many of the terms used in this document can be found in Appendix A.

This Manual uses terminology that is reflective of the specific contracting policies and procedures of the Airports Authority. The use in the Manual of terminology that is the same as or similar to terms used by the federal government or any other jurisdiction neither implies any similarity nor constitutes the adoption by the Airports Authority of any definition or interpretation of such terms by any federal or other jurisdiction.

Points of contact for various offices within the Airports Authority can be found in Appendix B.

References in this Manual are to specific paragraphs. The first digit indicates the chapter number or appendix letter designation where the paragraph can be found. For example, Paragraph 2.5.1 is in Chapter 2 and Paragraph C.3.4 is in Appendix C.

In addition to the Table of Contents in the front of the Manual, an index is provided at the end of the Manual as a quick-find topical reference.

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## 1 CONTRACTING AUTHORITY & PROCESS

Chapter ~~1~~1 describes the delegations of authority which apply to the contracting process of the Metropolitan Washington Airports Authority. It also ~~includes a statement concerning~~describes the Airports Authority's commitment to use "full and open competition" procurement procedures and ~~the Board a description of Directors approved categorical exceptions to the limited circumstances in which less than~~ "full and open competition" procurement procedures may be utilized.

The legislation that created the Airports Authority vests the Board of Directors with full legal authority for contracting~~;~~ (see "Introduction," supra, at footnote 1-). The Board of Directors has delegated certain contracting authority to the President and Chief Executive Officer (CEO) who is authorized to further delegate such authority. All competitively offered construction contracts are fully delegated. In its delegations of authority, the Board has reserved approval authority for contracts to acquire goods and services at a cost of \$3,000,000 or more and for concession contracts or leases that will result in annual revenue to the Airports Authority of \$3,000,000 or more. Board of Directors approval is also required ~~to~~ award of any exception to the requirement that the Airports Authority "obtain, to the maximum extent practicable, full and open competition" for any concession contract and for any goods, services or construction contract over \$200,000. ~~However,~~ contracts within the categories identified in Paragraph 1.2 do not require further Board approval unless they are for \$3,000,000 or more.

### 1.1 **FULL AND OPEN COMPETITION**

The Airports Authority is committed to "obtain to the maximum extent practicable, full and open competition" for its contracting opportunities. The Airports Authority's commitment to obtaining full and open competition ~~means that it shall publish~~includes publication and ~~adhere~~adherence to these the detailed contracting procedures in this Manual, which are designed to enable those interested in the Airports Authority's contracting opportunities to become familiar with the procedures that the Airports Authority follows. Special conditions may make it necessary to make material changes to the procedures in this Manual on a case-by-case basis and as authorized by the Board of Directors. In the event such

exceptions~~changes~~ are made, they will be identified as such in the solicitation, which should be read with care prior to submission of a proposal, quotation or bid. Non-material changes ~~that to the Manual's procedures,~~ provided they are not inconsistent with the achievement of full and open competition, may be made with approval of the Manager, Procurement and Contracts Department.

~~The solicitation will include specifications for goods and services described in a manner that will satisfy the Airports Authority's needs and encourage competition. While "full and open" is the norm, when the Airports Authority determines that a contract valued at over \$200,000 should be awarded with less than full and open competition, the approval of the Board shall be obtained unless it is processed as a categorical exception as described in Paragraph 1.2. In determining such value the Airports Authority will consider the estimated total value of a contract including the cost or price of options. Further, the next section of this Manual specifies exceptions to full and open competition.~~

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.2 of this Manual for additional guidance on special requirements and restrictions.

### **1.2—AND DOCUMENTS WITH DETERMINATIONS AND FINDINGS, CATEGORICAL EXCEPTIONS TO FULL AND OPEN COMPETITION**

~~As an exercise of its authority and discretion, by adopting this Manual the Board has determined that contracts in the categories listed below may be awarded without full and open competition. The exceptions, in total, comprise a small portion of the~~



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~~Airports Authority's contracts and their dollar value. The express intent of the Board is that individual consideration and approval by the Board is not required on a contract by contract basis for any of the following categories. Each category is hereby designated as a Board approved exception to the requirement for full and open competition for contracts in excess of \$200,000. The use of any categorical exception will be at a fair and reasonable cost and be documented by a determination and findings statement (see Appendix D) prepared by the requestor and approved by the Manager, Procurement and Contracts Department. If none of the Categorical Exceptions apply, but there is only one possible source available, then a sole source procurement in accordance with Paragraph 2.10 is required.~~

Approval by the Board of a contract within these six categorical exceptions will still be required by the Board's delegation of authority when the contract has a dollar value of \$3,000,000 or more or the Board has reserved its authority for approval of that contract.

### **1.2.7 Limited Competition**

The first Categorical Exception, Limited Competition, is used only when the Manager, Procurement and Contracts Department, determines and documents with determinations and findings that one of the following conditions exist: a) the need is clearly urgent and it is probable that serious detrimental consequences will result to the Airports Authority if the time for full and open competition is expended, e.g. urgent airport safety or security considerations, b) legal, financial, audit, or legislative representation professional services or, c) it is appropriate to limit competition by using a set aside for all of the contract, or in multiple award situations, where one or more of the contracts awarded will be set aside for certified LDBE firms; only non-LDBE firms will be excluded from this competition.

The determination and findings document will be prepared by the requestor, except the determination and findings document for LDBE set aside contracts will be prepared by the Manager, Equal Opportunity Department. The determinations and findings will be subject to review and approval of the Manager, Procurement and Contracts Department.

## **1.2 STANDARD COMPETITIVE PROPOSAL PROCEDURES (PARAGRAPH 2.2) WILL BE USED EXCEPT THAT THERE WILL BE LIMITED FULL AND OPEN COMPETITION WITH EXCLUSIONS**

### **1.2.1 Local Disadvantaged Business Enterprises – 100% Set Aside**

The Airports Authority may set aside contracts, when appropriate, for competition only among LDBE firms. While competition for such contracts is limited to LDBE firms, all LDBE firms able to perform the scope of work may compete for them.

In this situation, there shall be a minimum of 3 to 5 LDBE firms qualified to compete for a procurement opportunity before competition may be limited to LDBE firms. The justification for limiting competition to LDBE firms must explain the analysis used to support the limitation.

### **1.2.2 Airport Security.**

For security reasons, distribution of the solicitation (the goal is to have a minimum of 3 to 5 firms compete for urgent and set aside procurements.) For procurements in the urgent category, there will be a reduced response time. For urgent procurements, even when limited competition is utilized and response time is restricted, efforts will be made to enhance competition by a public announcement on the Airports Authority's website.

**NOTE:** Forsome solicitations funded by the Federal Transit Administration, see Paragraph 10.7.3 of this Manual for additional guidance on special requirements and restrictions.

### **1.2.8 Airport Security Controlled Distribution RFP**

The second Categorical Exception is used when distribution of an relating to airport security



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~~solicitation and information technology procurements must be controlled and be issued only to Airports Authority-approved firms. The Manager, Procurement and Contracts Department, must determine and document with determinations and findings that solicitation distribution must, for airport security reasons, be issued to only firms approved by the Airports Authority. This categorical exception applies. This methodology may be used~~ when it is possible that serious detrimental consequences could result to the public, the airlines, or the Airports Authority if the contents, or in some cases, the existence, of the solicitation and contract were revealed to unauthorized persons, including ~~those of course individuals~~ who may wish to do harm to the United States.

In this situation, the Manager, Procurement and Contracts Department, must determine, and documents with determinations and findings, that the solicitation distribution must, for airport security reasons, be issued only to firms approved by the Airports Authority. Standard competitive proposal procedures (Paragraph 2.2) will be adapted as necessary in this situation to ensure the required security for the solicitation. In general, such procurements will be preceded by an invitation for all firms to submit their qualifications for an upcoming procurement falling within this category. The Airports Authority will select several firms, based upon the criteria stated in the Request for Qualifications, to receive the solicitation. In addition, if the need is clearly urgent and it is probable that serious detrimental consequences will result to the Airports Authority if the response time ~~for used in full and open competition procurements is expended, then there will be used in this situation,~~ a reduced response time- and/or other than full and open competition methodologies may be used.

~~**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.4 of this Manual for additional guidance on special requirements and restrictions.~~

## **1.2.9 Utility Services and Supply**

~~The third Categorical Exception is used when the Manager, Procurement and Contracts Department,~~

~~determines and documents with determinations and findings that it is appropriate to use a sole source for the purchase of utility services available from only one practical source or where there is a sole source distributor.~~

~~**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.5 of this Manual for additional guidance on special requirements and restrictions.~~

## **1.2.10 Government Purchasing Agreements**

### **1.3 THE FOURTH CATEGORICAL EXCEPTION IS FOR CONTRACTS AWARDED USING COOPERATIVE/GOVERNMENT PURCHASING AGREEMENTS FULL AND OPEN COMPETITION USING CONTRACTS COMPETITELY PROCURED BY OTHER GOVERNMENTAL UNITS**

#### **1.3.1 Governmental Contracts and Suppliers.**

At times, the required goods, services or construction are used when it is beneficial as able to be obtained by utilizing a government-awarded contract previously awarded using competitive procedures. If utilization of the contract is determined by the Manager, Procurement and Contracts Department for, to be appropriate and beneficial to the Airports Authority to utilize a government-sponsored agreement previously awarded by a federal, state or local governmental entity, including a regional body, using competitive procedures, the Airports Authority may utilize such contracts. Sponsoring organizations may include the Metropolitan Washington Council of Governments (COG) and, the General Services Administration and other federal, state, county or local government agencies. In addition, required goods, services or construction may be acquired directly from a federal, state, local or regional governmental entity if this is necessary to comply with applicable governmental requirements, or if it is shown that acquisition of the

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required goods, services or construction in this manner is clearly less costly than if the acquisition were competed by the Airports Authority alone. Each contract of this type utilized must be supported by written determination and findings that include, at a minimum, a finding that such utilization is in the best interests of the Airports Authority and that the supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source.

### **1.4 OTHER THAN FULL AND OPEN COMPETITION**

As stated in Paragraph 1.1, the Airports Authority normally will obtain full and open competition when acquiring or procuring goods, services and construction. However, as described below in this paragraph, there circumstances in which contracting with other than full and open competition methods may be warranted. When the Airports Authority determines that the acquisition of goods, services or construction valued at over \$200,000, using other than full and open competition procurement procedures, is warranted, Board approval of the use of other than full and open competition shall be obtained; provided, that where obtaining Board approval is not possible in advance of contract award due to the urgency of the circumstances, Board approval will be sought as soon as possible after award. In determining the value of an acquisition, the Airports Authority will consider the estimated total value of a contract, including the cost or price of options.

A variety of circumstances may give rise to the need to procure goods, services or construction with other than full and open competition. The following paragraphs describe these circumstances. However, even in these circumstances, no goods, services and construction may be procured with other than full and open competition unless the use of other than full and open competition is adequately justified and the cost of the procurement will be fair and reasonable. The justification for the use of other than full and open competition shall be prepared by the office requesting the goods, services or construction, shall comply with standards established by the Procurement and

Contracts Department (see Appendix D), and shall be approved by the Manager, Procurement and Contracts Department. The use of other than full and open competition is never justified by the lack of acquisition planning. The Contracting Officer shall be responsible for ensuring that the cost of the procurement will be fair and reasonable.

### **1.4.1 Circumstances That May Result in Other than Full and Open Competition Procurements**

In general, when other than full and open competition procurement procedures are used, the Airports Authority will solicit offers from as many potential sources as possible or practical under the circumstances, and except for situations where there is only one possible or practicable source, limited standard competitive proposal procedures (see Paragraph 2.2) will be used.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.63 - 10.7.8 of this Manual for additional guidance on special requirements and restrictions.

The following are the categories of circumstances in which other than full and open competition may be used with proper justification.

- (1) *Urgent and Compelling Need.* The need for goods, services or construction is so urgent and compelling that the Airports Authority would be seriously injured, financially or otherwise, unless the Airports Authority can limit the number of sources from which it solicits bids or proposals ( e.g., urgent airport safety or security considerations). When possible, the Authority will endeavor in this situation to seek proposals from a minimum of three offerors, though a reduced response time may be utilized. In addition, efforts will be made to enhance competition by a public announcement of the urgent needs on the Airports Authority's website.

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### **1.2.11 Airline Tenant Procured Projects**

(2) The fifth Categorical Exception is for contracts with airline tenants for expenditures to procure Improvements to Airport Facilities. The procurement of construction services by an airline tenant to deliver specifically identified and approved improvements to airport facilities may be entered into by is in the best interests of the Airports Authority. The Airports Authority may enter a reimbursement Agreement with an airline tenant to deliver such improvements as an alternative to the Airports Authority contracting directly for the improvements. This procedure shall be used only when the Airports Authority has determined that the airline tenant has will have a substantial interest in the improvement improvements as a part of its leasehold or it is the improvements will be integral to their operation; its operations (e.g., improvements to an airline tenant tenant's passenger processing facilities and equipment, baggage handling, system or communication facilities for the dissemination of passenger, flight, and aircraft information. The ). Whenever possible, the Airports Authority will require the airline tenant to obtain full and open competition for the construction services. If other than full and open competition is necessary, the Airports Authority will require the airline tenant to show that it has used reasonable measures to obtain fair and reasonable prices for the improvements. The Airports Authority construction service, and s may require competition among offerors acceptable to the Airports Authority, including using a list of pre-qualified contractors. These Such a reimbursement agreement with an airline procured projects are tenant may be used only when the Manager, Procurement and Contracts Department, and the Chief Operating Officer determine, and document with determinations and findings, that it is in the best interests of the Airports Authority to procure an improvement the improvements through a tenant the reimbursement contract agreement.

(3) **NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.7 of this Manual Sole Source. There is only one responsible or one practicable source for additional guidance on special required goods, services or construction, and no other supplies or services will satisfy the Airports Authority's requirements and.

The following are examples of situations in which the Airports Authority may procure goods, services or construction directly from a sole source:

(a) Unique or Innovative Concepts. The source of the supplies or services demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel or changed concept, approach or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and the concept, approach or method is available to the Airports Authority only from one source and has not in the past been available to the Airports Authority from another source.

(b) Patents or Restricted Data Rights. The existence of patents or restrictions arising from intellectual property or other proprietary rights preclude competition and make supplies or services available only from a single source.

### **1.2.12 (c) Proprietary Equipment and Software**

The sixth Categorical Exception is for sole source purchases of add-on. In the case of a follow-on contract for the addition of proprietary equipment or software, or sole source purchases for the maintenance for of such proprietary equipment or software, such equipment or software where such may be available from only a single source. Thus, where proprietary equipment or software was originally purchased by the Airports Authority through full and open competition or where the equipment was

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~~purchased~~ as part of a required system in the Airports Authority's design manual. ~~This approach will, add-on equipment or software and maintenance for the equipment or software may be used when~~ procured using sole source procedures if the required product must be compatible with and is an integral component of existing equipment or systems, or the product is ~~onesuch that a user has had extensive training and experience and the user of existing proprietary equipment or systems~~ would require considerable reorientation and ~~re-training to use if another item~~ product were used.

(d) Utility Services and Supplies. When utility services or supplies are available from only one actual, or one practicable, source. In this situation, the requesting office must clearly document that there are no other reasonably available sources for the required utility services or supplies.

The Manager, Procurement and Contracts Department, must determine, and document with determinations and findings, that it is not prudent to make ~~these purchases a~~ purchase of maintenance, add-on equipment or software or maintenance, through full and open competitive ~~methods~~ because of the proprietary nature of the equipment or software or because of the incompatibility of other software or equipment. ~~One aspect of~~ In performing the determinations and findings analysis ~~will be that,~~ consideration shall be given to replacing the existing proprietary equipment or software in total with an entirely new system purchased under full and open competitive procedures. The Airports Authority is not tied forever to existing proprietary equipment; ~~rather, or software;~~ technically acceptable systems that utilize generic, compatible components are preferred as being in the best interests of the Airports Authority.

**NOTE:** ~~For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.8 of this Manual for additional guidance on special requirements and restrictions.~~

## 1.4.2 Written Justifications for Other than Full and Open Competition

All contracts awarded through other than full and open competition must be supported by written determinations and findings justification documents. The justification must include, at a minimum: Identification of the document as a Justification for Other than Full and Open Competition; a description of the contracting activity; a description (including estimated value) of the goods, supplies or services needed to fulfill the Airports Authority's requirements; an identification of the authority provided by this *Manual* to enter into the contract; a demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires the use of other than full and open competition procedures; a description of the efforts used to ensure that bids or proposals were solicited from as many sources as possible or practicable; a determination by the Contracting Officer that the cost to the Airports Authority will be fair and reasonable; any other facts supporting the use of other than full and open competition; a listing of sources, if any, that expressed interest in the acquisition; a statement of the actions, if any, that the Airports Authority can take to avoid other than full and open competition in subsequent acquisitions; and a certification by the Contracting Officer that the justification is accurate and complete to the best of their knowledge and belief.

Justifications must be made publicly available by posting on the Airport Authority website within 14 days of the contract award and must remain available for a minimum of 30 days.

## 1.31.5 CHIEF EXECUTIVE OFFICER'S AUTHORITY

The President and Chief Executive Officer (CEO) ~~is authorized has been delegated by the Board of Directors the authority to~~ acquire the full range of goods, services, goods, and construction, ~~and materials~~ needed to operate and maintain the Airports, subject to and in accordance with the delegations, conditions and limitation in the Board's delegation. The CEO ~~is also~~



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has been authorized by the Board to extend existing concession contracts for up to 12 months when the existing concession contract would expire prior to the date a new contract would take effect.

#### **1.3.11.5.1 Delegations from CEO**

The ~~President and Chief Executive Officer~~ CEO has delegated certain contracting authority to various Airports Authority staff ~~through members in~~ Metropolitan Washington Airports Authority Directive GC-002, entitled *Delegation of Contracting Authority*, as it may be amended, from time to time. This document is available on the Airports Authority's website and by contacting the Manager, Procurement and Contracts Department,.

#### **1.3.21.5.2 Re-delegation of Contracting Authority**

Where specified in the ~~Airports Authority Directive GC-002~~ Delegation of Contracting Authority directive, as it may be amended from time to time, the authority delegated ~~to each of the officials~~ by the CEO to certain staff members may be re-delegated. by those members. Any re-delegation of contracting authority by a staff member who has been issued a Certificate of Appointment shall be subject to the conditions and limitations in that Certificate of Appointment, including any specific dollar level limitations.

Documentation of all contracting authority re-delegations shall be maintained by the staff members making such re-delegations, and shall include the name of the person receiving the re-delegation, the date of the re-delegation, the duration of the re-delegation, and any limitations on the re-delegation. A copy of each re-delegation shall be sent to the Manager, Procurement and Contracts Department. The Procurement and Contracts Department shall keep a centralized record of all delegations and re-delegations of contracting authority.

Only persons with a valid written ~~authorization to delegation of contracting authority that authorizes them to contractually~~ commit and bind the Airports

Authority may enter into acquisition contracts on behalf of the Airports Authority ~~can enter into contracts and other~~ and any related contractual instruments, such as contract modifications, change orders, task orders, delivery orders, and purchase orders.

~~All delegations of authority, including those where no specific dollar level is specified, are contingent upon any limitations stated in each individual's Certificate of Appointment.~~ persons delegated contracting authority and all Contracting Officers' Technical Representatives (COTR) shall receive initial and recurring formal procurement training.

#### **1.41.6 RESPONSIBILITIES OF PROCUREMENT OFFICES**

~~Within the Metropolitan Washington Airports Authority, there are three separate procurement offices that are authorized to contract for the acquisition of goods, services, and construction contracting to the extent limited by total contract dollar amount:~~ The procurement of all goods, services and construction for the Airports Authority and the Board of Directors shall be undertaken only by the procurement offices listed below in this paragraph, or undertaken pursuant to authorization granted by one of the procurement offices listed below, in accordance with their described authorities and responsibilities.

#### **1.4.11.6.1 Procurement and Contracts Department**

The Procurement and Contracts Department is authorized to procure goods, services, and construction in excess of the dollar amounts delegated to the Materials Management Divisions as set forth in Paragraph 1.6.21.4.2 and is also responsible for specific categories of procurement actions as described in Paragraph 1.6.21.4.2.

The Manager, Procurement and Contracts Department develops and provides procedures as necessary for concession contract solicitations and for purchases made under the *Airport Purchasing Policies and Procedures Manual*. In addition, the Manager,

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Procurement and Contracts Department oversees the contracting process for concession contracts to be awarded under Chapter 6 of this Manual.

#### **1.4.21.6.2 Materials Management Divisions**

The Materials Management Divisions at each airport report to the Manager, Airport Administration Department. Except as provided below, the Materials Management Division at Ronald Reagan Washington National Airport and the Materials Management Division at Washington Dulles International Airport are authorized to procure services and property that involves a total commitment which is currently set at \$50,000 or less where the evaluation criteria is based on price only. That commitment level is subject to change as directed by the Chief Operating Officer who may also designate any exceptions to the purchasing authority of the airports. Currently, the designated exceptions are that the Procurement and Contracts Department will maintain centralized responsibility for the following categories of purchases:

- (1) Motorized vehicles including trucks, tractors and automobiles, regardless of cost.
- (2) Firearms, weapon systems, and ammunition, regardless of cost.
- (3) Purchases ~~which~~that involve funding by federal or state grants, regardless of cost.
- (4) Computers and related equipment including portable and desktop computers, file servers, minicomputers, computer assisted design (CAD) systems, network equipment such as routers, bridges, hubs and repeaters, network interface cards, printers, scanners, etc. This applies to capitalized equipment in Natural Account Code 1800 (with unit prices \$10,000 or above) as well as non-capital equipment in Code 6800 (less than \$10,000) with one exception. The exception is that the airports are authorized to purchase non-capital equipment such as mice, keyboards, printer cartridges, tape backup systems, etc., with unit prices of \$250 or less.
- (5) Miscellaneous office equipment consisting of facsimile (fax) machines, copiers, word processors, typewriters, stenographic equipment, and mailing/sorting equipment regardless of cost.

#### **1.4.21.6.2.1 Additional Responsibilities**

The Material Management Divisions have the responsibility for purchasing support for Consolidated Functions and Public Safety, within the same limitations as set forth in Paragraph 1.6.21.4.2 above.

#### **1.4.21.6.2.2 Operational and Procedural Direction**

The Materials Management Divisions are responsible to the Airport Administration Department Managers and ultimately to their respective Airport Managers. They are subject to the Airports Authority's *Airport Purchasing Policies and Procedures Manual*. Waiver authority for procedural issues is vested in the Manager, Procurement and Contracts Department. Requests for all construction contracts, and for services and property which are beyond Materials Management Divisions' procurement authority as set forth in Paragraph 1.6.21.4.2, shall be submitted to the Procurement and Contracts Department. Splitting requirements of the same items between two or more orders to stay within the Materials Management Divisions' authority level is not an acceptable practice. Requestors must submit requests that exceed Airport limits to the Procurement and Contracts Department.

#### **1.4.31.6.3 Emergency Purchase Authority**

During hours that the Procurement and Contracts Department is not open for business, the Airport Operations Officer may authorize emergency purchases. The CEO must approve use of emergency procurement procedures that are exceptions to the standard procedures described in this Manual. Such approval ~~can~~should be prior to any purchase, however, if exigent circumstances exist, may be obtained as soon as possible after the ~~fact~~purchase and must be supported by a written justification. These emergency procedures can be implemented when an urgent or critical need exists and an exception to normal procedures is necessary to prevent potential injury, bodily harm, and significant financial loss to the Airports Authority, or significant interruption of air service. Compliance with the following reporting procedures is the responsibility of the manager of the department that made the emergency procurement. If

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the emergency procurement is over \$10,000 and is within the CEO's contracting authority, an after-action report of the situation, including an explanation of the need to use the emergency procurement procedures, shall be submitted to the CEO within 3 days after the occurrence. Those emergency procurements that exceed the CEO's contracting authority require an after-action report of the situation to be submitted to the Board of Directors within 3 days after the action is taken. When appropriate, the report shall recommend ways to preclude recurrence of the situation that required the emergency procurement.

### **1.7 ANNUAL ACQUISITION FORECASTS; QUARTERLY REPORTS**

The annual acquisition forecast is an essential step in the Airports Authority's acquisition process. The forecast is designed to ensure that offices requiring goods, services or construction at a cost of over \$50,000, well in advance of the actual acquisition of these items, identify their needs and begin to plan for the procurement of the items and their inclusion in the Airports Authority's annual budget.

Every Airports Authority office shall provide the Manager, Procurement and Contracts Department, with an annual acquisition forecast in accordance with instructions from that department. Personnel from each office, using its forecast, will then work with the Procurement and Contracts Department to develop a comprehensive contracting plan to meet the office's needs. The goal of this process is to ensure the Airports Authority's acquisition requirements are met on time and with full consideration of needs, cost and revenue impacts.

In addition to the annual acquisition forecasts, the Manager, Procurement and Contracts Department shall present to the Board and to the Secretary of Transportation a quarterly procurement report that lists all acquisitions made during that quarter, including the type of acquisition made, the vendor the contract was awarded to, the dollar amount of the award, whether full and open competition was used, and if not, the authority under which it was not.

### **1.5.1.8 ADVERTISEMENT OF CONTRACTING OPPORTUNITIES**

The Airports Authority fosters competition and develops sources for acquiring goods and services by using the following methods to achieve maximum exposure for current businesscontracting opportunities:

- (1) The primary public notice of the availability of all solicitations over \$25,000, is on the Airports Authority's website ([www.mwaa.com](http://www.mwaa.com)). In most cases, the entire solicitation is available for download; when electronic download is not available, requestors will be furnished either electronic documents on CD-ROM or printed copies of the solicitation.
- (2) In addition to posting on its website, the Airports Authority provides periodic e-mail notification of businesscontracting opportunities to interested firms that have registered on-line ([www.mwaa.com](http://www.mwaa.com)) for "PROJECT eLERT." Notification of contracting opportunities will be sent directly to the e-mail address of registered firms. This e-mail notification is distributed approximately bi-weekly with increased frequency when a large number of contracting opportunities have been issued by the Airports Authority. If not previously enrolled, interested LDBEs and DBEs with e-mail addresses may register for PROJECT eLERT.
- (3) Except as provided herein, notification of the availability of solicitations over \$200,000 will be publicly advertised in the legal notice section of the Washington Post. If deemed necessary, appropriate notice may be included in an industry trade publication which is known to precisely target prospective offerors.

**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.

- (4) The Airports Authority conducts an annual Business Opportunity Seminar ~~Seminars~~ to inform all interested parties about how to

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compete for the opportunities that exist. It also provides a face-to-face forum for prime contractors to meet and discuss subcontracting opportunities with interested firms. The Airports Authority is also represented at business and trade fairs, and industry conferences sponsored by other organizations.

- (5) The Airports Authority may also promote participation by local, small, minority, and woman owned businesses through direct mailings and notices in media which reach this business community.
- (6) The Airports Authority maintains an "open door" policy with the business community.
- (7) The length of time between the date a solicitation is advertised and the due date for offers or bids will vary depending on the Contracting Officer's assessment of the complexity of the solicitation and the Airports Authority's needs. Average complexity solicitations normally will be advertised for approximately 4 weeks. More complex and unusual solicitations may be advertised for approximately 6 to 8 weeks, and simpler ones, typically those for goods, may be advertised for 3 weeks or less. During the advertisement period, the Contracting Officer may choose to extend the deadline for submission of proposals or bids when feasible.

#### **4.6.1.9 SOLICITATION AND CONTRACT AWARD**

The solicitation and contract award phase includes the activities that take place between the time a fully-approved Requisition is received by the authorized procurement office and the time a contract or purchase order is issued. This phase could include soliciting proposals, qualifications, quotations, or bids from responsible sources; evaluating the responses to the solicitation; securing the necessary approvals; and awarding the contract to the selected source. To obtain goods and services and to grant concession contracts, the Airports Authority normally will use one or a

combination of the following contracting methods which are discussed in Chapter 2:

<u>Contracting Method</u>	<u>Paragraph</u>
(1) Competitive Proposals (RFP)	2.2
(2) Best Value Procedure	2.5
(3) A/E Source Selection	2.6
(4) Construction Contracting	2.7.1
(5) Design-build Contracts	2.7.5
(6) Advertised Sealed Bids	2.8
(7) Two Step Advertised Sealed Bids	2.8.5
(8) Limited Competitive Proposals	<del>1.12.9</del>
(9) Controlled Distribution RFP	<del>2.9.22.9.1</del>
(10) Sole Source Negotiation	<del>1.12.10</del>
(11) Cooperative/Government Purchasing Agreements	<del>2.9.42.11</del>
(12) Request for Quotations (RFQ)	<del>2.102.12</del>

~~The first 7 methods provide for full and open competition at the onset. Methods 8, 9, 10 and 11 are less than full and open competition procedures. Method 12 is a procedure whereby non-binding quotations for procurements under \$200,000 are solicited on a full and open basis prior to award of a purchase order. Board approval is required by Paragraphs 1 and 1.1 prior to award of any contract or purchase order over \$200,000 that is awarded without using full and open procedures, unless it is covered by one of the categorical exceptions in Paragraph 1.2.~~

#### **4.6.11.9.1 Protests**

Chapter 7 describes protest procedures, appeal process, remedies, and judicial review.

#### **4.6.21.9.2 Notifying and Debriefing Unsuccessful Offerors**

The Contracting Officer will notify offerors promptly when their proposals are excluded from the competitive range or otherwise eliminated from the competition. Prompt notification of the name and address of the firm receiving the award and the amount of the award will be made to offerors whose proposal was in the competitive range but was not selected for award.



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A debriefing affords an opportunity for an unsuccessful offeror to be informed regarding the basis for final selection and contract award as it specifically relates to the offer submitted by the unsuccessful firm. The nature of the procurement process is such that debriefing requests will generally involve solicitations that contained evaluation criteria other than price. Where price was the only factor, a debriefing will not normally be conducted.

A firm may desire to learn as much information as possible concerning how their offer was evaluated by the Airports Authority so that they can reevaluate and perhaps change their technical approach, pricing strategy, or other aspects of future offers. The following paragraphs reflect some basic principles that apply to Airports Authority notifications and debriefings.

Contractor requests for debriefing must be submitted in writing to the Contracting Officer within 15 days after the firm was advised they were unsuccessful. However, if the initial request for a debriefing comes to the Contracting Officer in a phone call, it may be possible to immediately accomplish the debriefing by phone.

If the request is made prior to award and the offeror desires the debriefing to be prior to award, the Airports Authority will endeavor to accommodate that request, but may proceed to award the contract prior to debriefing if the Manager, Procurement and Contracts, determines it is in the best interests of the Airports Authority to do so.

The Contracting Officer has primary responsibility for responding to debriefing requests; staff assistance will be requested as needed. In conducting a debriefing, the Contracting Officer will concentrate on information that can be of benefit to the firm without revealing any sensitive or proprietary data regarding the competition. Paragraph 2.13.6 of this Manual, relating to release of information, will apply. Price discussions should be limited to bottom-line amounts. A competitor's internal pricing information (profit, overhead rates, etc.), trade secrets, manufacturing processes, or other confidential business information will not be revealed.

Airports Authority debriefings are structured to protect the integrity of information submitted by all competitors. Concentration will be on the firm being debriefed, their submittal, and when appropriate, a general description of the basis for the Airports Authority's selection decision. The debriefing will address the strengths and weaknesses of the firm as related to the evaluation criteria in the solicitation.

When A/E source selection procedures are used, notification of non-selection to the short list shall be made by the Airports Authority when the short list is established. Unsuccessful short-listed firms shall be notified of the name and address of the firm selected for final contract negotiations. Firms so notified may request and receive a debriefing.

### **1-7.1.10 CONTRACT ADMINISTRATION**

Contract administration refers to the activities that take place between the time a contract or purchase order is signed with the successful offeror/bidder until its formal closeout.

Contract administration activities are designed to assure that the contractor complies with all aspects of the contractual agreement. Airports Authority contracts contain audit provisions that allow examination of contractors' financial records by the Airports Authority.

#### **1-7.41.10.1 Disputes**

Chapter 8 provides information concerning non-binding dispute resolution procedures as applied to Airports Authority contracts and the required waiver of jury trial.

#### **1-7.21.10.2 Points of Contact**

Appendix B, Points of Contact, provides the addresses and telephone numbers for various Airports Authority offices.

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## **1.11 STANDARDS OF CONDUCT**

The Airports Authority expects all employees and members of its Board of Directors to act in the best interests of the Airports Authority at all times and to not engage in conduct that is illegal, dishonest, or brings discredit upon the Airports Authority, or participate in any Airports Authority matter as to which the employee has a conflict of interests. In particular, employees who obligate the Airports Authority to spend money, approve payments, and make decisions affecting disbursements have a special duty to make their recommendations and decisions without prejudice, seeking to obtain the maximum value for the Airports Authority.

### **1.11.1 Codes of Ethics**

The Airports Authority's *Code of Ethics for Employees* and *Code of Ethical Responsibilities for Members of the Board of Directors*, which are available on the Airports Authority's website, [www.mwaa.com](http://www.mwaa.com), are hereby incorporated into this Manual as if they were expressly set forth. In general, these Codes prohibit the solicitation of Gifts and restrict the acceptance of Gifts;<sup>1</sup> prohibit employees and members of the Board from using their position for the gain of acquaintances or relatives or their own gain; define Substantial Financial Interests and restrict employees and members of the Board from participating in any transaction or matter as to which they have a conflict of interests; and define certain restrictions (including restrictions related to Airports Authority contracting activities) that are applicable to employees following the termination of employment with the Airports Authority and to Board members following the expiration of their term.

Employees and members of the Board who violate these Codes are subject to sanctions as set forth in the applicable Code.

<sup>1</sup> Capitalized terms in this paragraph are defined in the Airports Authority's *Code of Ethics for Employees* and/or *Code of Ethical Responsibilities for Members of the Board of Directors*.

### **1.11.2 Contractor Certificates and Disclosures; Employment of Former Airports Authority Employees**

All offerors for Airports Authority contracts shall be required to submit a certificate with the offer that states that, to the best of their knowledge and belief, and with the exception of any information listed in the certificate, they have no information concerning any conduct by an Airports Authority employee or a member of the Board that is or may be in violation of either of the Codes of Ethics. The Airports Authority will evaluate the information provided in an offeror certificate and, based on the information, may cancel the solicitation or take any other action it determines to be in the best interests of the Airports Authority, such as the disqualification of the offeror. If it is subsequently determined that an offeror to which a contract has been awarded submitted a certificate with false or erroneous information or falsely or negligently certified that it had no information concerning actual or possible violations of the Codes, its contract may be cancelled or rescinded and it may be required to repay the Airports Authority all amounts paid under the contract.

Contractors are advised that the Code of Ethics for Employees imposes certain restrictions on the activities in which employees may engage following their employment with the Airports Authority, and contractors should consult the Code before engaging such employees after their departure from the Airports Authority.

### **1.11.3 Prohibited Conduct and Procurement Integrity**

Airports Authority business shall be conducted in a manner above reproach and with complete impartiality and preferential treatment for none. The following conduct is strictly prohibited:

- 1) The offer or the provision of anything of value, by an offeror or contractor, to an Airports Authority employee or a member of the Board with the intent to influence an action or decision to be made by the employee or

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Board member, or with the intent to compensate or recognize the employee or member for an action or decision that the employee or member has made. (Gifts to employees and Board members are substantially restricted by the Codes of Ethics; persons seeking to contract with, or under contract with, the Airports Authority should consult the Codes for details.)

- 2) The disclosure by an Airports Authority employee, Board member or offeror, other than to persons authorized to receive such information, of bid or proposal information or source selection information prior to contract award, except in accordance with this Manual and the Airports Authority's Freedom of Information Policy.
- 3) Use of procurement information for personal gain, including negotiation for future employment outside of the Airports Authority.
- 4) Acceptance of kickbacks, bribes, gratuities and other similar monetary payments by anyone.
- 5) Participation in a particular matter by those acquisition personnel having a conflict of interest regarding the matter.

All acquisition and contracting personnel having decision making or contract administration duties shall receive, as part of their annual ethics training, supplemental procurement integrity training.

Any violations of this chapter may be subject to both supervisory discipline and referral to the Airports Authority Ethics Officer for investigation.

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## 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.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Chapter 10 for additional guidance on special requirements and restrictions.

#### **2.1.72.1.1 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;

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- (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.

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

Certified cost or pricing data generally are required to be submitted by contractors in connection with proposals and claims under federally-assisted contracts. When certified 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 \_\_\_\_\_"

### **2.2.82.2.2 RFP Content**

#### **2.2.8.12.2.2.1 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.

#### **2.2.8.22.2.2.2 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.

#### **2.2.8.32.2.2.3 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	<u>2.11.32-43</u>
<del>4</del>	
Establishing solicitation response time	E.1
Determination of responsibility	2.4.6
Contract award	2.4.5

### **2.2.92.2.3 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.

### **2.2.102.2.4 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



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(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.

### **2.2.112.2.5 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~~Such procurements shall ~~not be treated as~~considered to have been fully and openly competed even though only a sole source. ~~single response was received.~~ However, ~~in such cases prior to contract award,~~ 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 the terms of the contract 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 10.7.10 of this Manual for additional guidance on special requirements and restrictions.

### **2.2.122.2.6 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~~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 ~~2.11.72.13.8~~ 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 ~~2.11.92.13.10~~ 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.

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- (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.

## ~~2.2.13~~2.2.7 **RFP Evaluation Criteria**

### ~~2.2.13.12~~2.2.7.1 **Establishment of Criteria**

Evaluation criteria as described in Paragraph C.3 should be submitted with the Requisition by the requestor. The solicitation and the Airports Authority's 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.

### ~~2.2.13.22~~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.

### ~~2.2.13.32~~2.2.7.3 **Price Formula**

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

### ~~2.2.13.42~~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.

### ~~2.2.13.52~~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



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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.

### ~~2.2.14~~ **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.

### ~~2.2.15~~ **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. 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

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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.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.12 for additional guidance on special requirements and restrictions.

### ~~2.2.16~~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 10.7.13 of this Manual for additional guidance on special requirements and restrictions.

### ~~2.2.17~~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 criteria

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and the evaluation of such criteria 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)**

### **2.3.72.3.1 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~~ In order to ensure independent evaluations, no two voting EC members should work for the same first-level supervisor, nor ~~should~~ shall 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

### **2.3.82.3.2 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

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| <p>of such experience and its quality in terms of the RFP's scope of work may be judged.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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).</p> | <p>(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.</p> <p>(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.</p> <p>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.</p> <p>(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</p> |
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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.

### ~~2.3.9~~**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).

### ~~2.3.10~~**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**

### ~~2.4.7~~**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.

#### ~~2.4.7.1~~**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.

#### ~~2.4.7.2~~**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.

#### ~~2.4.7.3~~**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



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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.

#### **2.4.82.4.2 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.

#### **2.4.92.4.3 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.

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#### **2.4.102.4.4 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.

#### **2.4.112.4.5 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.

#### **2.4.122.4.6 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.

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~~2.4.12.12.4.6.1~~ 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.

~~2.4.12.22.4.6.2~~ 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 Requisition 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.

~~2.4.12.32.4.6.3~~ 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.

~~2.4.12.42.4.6.4~~ 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.

~~2.4.12.52.4.6.5~~ 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.

~~2.4.12.62.4.6.6~~ 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.



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

#### ~~2.4.13~~ **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.

#### ~~2.4.14~~ **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.

#### ~~2.4.15~~ **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 ~~04~~); 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 ~~1.9.21.6.2~~ 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

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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.

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

Upon receipt of a Requisition 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 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.

### **2.6.82.6.2 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.

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### **2.6.92.6.3 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 ~~1.9.24.6.2~~ for information concerning debriefing unsuccessful firms. Copies of qualifications provided to EC members should be returned to the Contracting Officer.

### **2.6.102.6.4 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 ~~04~~.

## **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

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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.

### **2.7.72.7.1 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, 10.4.6.8 and 10.7.17 of this Manual for additional guidance or special requirements and restrictions.

### **2.7.82.7.2 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 Requisition 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.

### **2.7.92.7.3 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.

### **2.7.102.7.4 Minimum Work by General Contractor**

When submitting Requisitions for construction contracts, requestors shall indicate on the Requisition 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.

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## **2.7.112.7.5 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 Information" (RFQI) 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 short-listed 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 (as well as the timing of their submission) 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 RFQI 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



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offerors which 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 Paragraphs 10.4.6.5, 10.4.6.8 and 10.7.16 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.

### **2.8.72.8.1 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.

### **2.8.82.8.2 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.

### **2.8.92.8.3 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.

### **2.8.102.8.4 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

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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.

### **2.8.11 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**

### **2.9 OTHER CONTRACTING METHODS**

#### **2.9.1 LIMITED COMPETITIVE PROPOSALS**

Limited ~~competition~~ competitive proposals is ~~one of the categorical exceptions to a contracting method that utilizes other than~~ full and open competition procedures (see Paragraphs ~~04.2~~ (1), 1.2(2), 1.2(3), and 1.7). It is a form of competition in which the solicitation is distributed to a limited number of offerors. ~~Limited competition or for which eligible offerors are limited~~. This method is implemented by using the RFP procedures in accordance with Paragraph 2.2 or A/E Source Selection as described procedures in Paragraph 2.6.

**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.

#### **2.9.12.9.2 Controlled Distribution RFP**

Controlled distribution ~~is one of the categorical exceptions to~~ RFP is another contracting method that ~~utilizes other than~~ full and open competition procedures (see Paragraphs ~~1.1.74~~ 1.1.74-2.2). Such RFPs are issued only to Airports Authority approved firms. This ~~category provides a means to ensure that method may be used only~~ when necessary and justified for airport security reasons, ~~only Airports Authority approved firms will be issued the solicitation~~. Dependent upon the situation, there may be no ~~notice or~~ announcement of the ~~solicitation~~ RFP or the award.

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### **2.9.3 Sole Source Negotiation**

Sole source negotiation is another contracting method that utilizes other than full and open competition may be restricted.

### **2.10 SOLE SOURCE NEGOTIATION**

procedures. This type of procurement method occurs when there is only one known or acceptable source for the item. The (see Paragraphs 1.2(h) and 1.7). This method is implemented by using the RFP process described in Paragraph 2.2 is used for sole source procurements, except for aspects of that process 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 whose acquisition may be subject to this contracting method are provided in Paragraph 1.2(h).

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 Requisitions in excess of \$2,500, the requestor ~~should~~shall include a sole source justification with the Requisition. 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 Manager. 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

When making a sole source procurement contract award, 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.

For "sole source negotiation" procurements under Paragraph 1(h) that are in excess of \$200,000, notice prior to contract award will be published on the Airports Authority's website, as provided in Paragraph 1.6(1), describing the item to be acquired, stating that the Airports Authority has determined that only one source of the item is practicably available, identifying that sole source, and stating the date on which the contract will be awarded. . 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.

### **2.12.9.4 Cooperative/Government Purchasing Agreements**

This contracting method is one of the categorical exceptions to considered full and open competition (see Paragraph 01.2(6)). Procurements under cooperative/government purchasing agreements are handled on Purchase Orders or Blanket Purchase Orders since there is no solicitation process involved. See Paragraph 2.10.12.12.4 for additional information.



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### **2.122.10 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 10.7.19 of this Manual for additional guidance on special requirements and restrictions.

### **2.12.12.10.1 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 10.7.20 of this Manual for additional guidance on special requirements and restrictions.

### **2.132.11 GENERAL SOLICITATION CONSIDERATIONS**

#### **2.13.12.11.1 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.

### **2.13.8 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 10.7.21 of this Manual for additional guidance on special requirements and restrictions.~~

#### **2.13.32.11.2 Solicitation Distribution**

Advertisement of solicitations is covered in Paragraph ~~1.84.5~~. 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

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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 ~~1.84.5~~ those organizations may be contacted directly to make arrangements to view the solicitations.

### **2.13.42.11.3 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.

#### **2.13.4.42.11.3.1 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.

#### **2.13.4.22.11.3.2 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.

#### **2.13.4.32.11.3.3 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.

### **2.13.52.11.4 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).

### **2.13.62.11.5 Public Release of Information**

The Airports Authority's Freedom of Information Policy, adopted by the Airports Authority's Board of Directors, governs the release of Airports Authority records. Under the Freedom of Information Policy, Airports Authority records containing confidential business information of the Airports Authority are exempt from release. Records containing confidential business information of parties other than the Airports Authority are also exempt from release, which may include records created by or relating to offerors and contractors. In addition, records that are considered privileged ~~predecisional~~pre-decisional documents are exempt from release. These exemptions, when applied

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to records prepared during, in conjunction with, or as a result of an Airports Authority procurement, are intended to protect the integrity of the procurement process and to preserve the confidentiality of certain information submitted during the process by offerors and contractors. Airports Authority employees and Board members shall safeguard and not disclose any confidential business information or privileged pre-decisional documents associated with Airports Authority procurements.

The following provisions govern the release of records (including releases pursuant to requests under the Freedom of Information Policy) that have been prepared during, in conjunction with, or as a result of an Airports Authority procurement.

- (1) Proposals or bids submitted by offerors may be withheld from release at any time, except that, after contract award, portions of the winning proposal or bid that have been incorporated into the contract and that do not contain confidential business information of the contractor, will be released.
- (2) Offers and price schedules submitted by offerors, and abstracts of offers created by the Authority, may be withheld from release at any time, except that, following the date of contract award, or the date written notice of award is sent to unsuccessful offerors, whichever occurs first, abstracts with the names of unsuccessful offerors redacted and with total price offers (other than unit prices) shown on such documents will be released. If the solicitation sought prices for multiple contract years, the total price offer for each contract year will be released after the date of award, or the date written notice of award is sent to unsuccessful offerors, whichever occurs first. With respect to solicitations conducted under Invitation for Bid procedures, bids, price schedules, and abstracts of offers containing information read aloud at bid opening pursuant to Paragraph 2.8.3 will be released after bid opening.
- (3) The names, notes and score sheets of individual Evaluation Committee members may be withheld from release.
- (4) Compilations of the scoring and scoring rationales of an Evaluation Committee may be withheld from release, except that a committee's final scoring summary, including its scores for each offeror under each evaluation criterion and its total score for each offeror, as well as the committee's rationales for such scoring, will be released after the date of contract award, or the date written notice of award is sent to unsuccessful offerors, whichever occurs first, but with the names of Evaluation Committee members and unsuccessful offerors redacted.
- (5) Recommendation or information papers provided to the Board or Board Committees may be withheld from release, except that the following information in such papers will be released after the date of contract award, or the date written notice of award is sent to unsuccessful offerors, whichever occurs first: number of proposals or bids; identity of the winning offeror(s); description of the evaluation process; number of offerors on the short list (if any); final evaluation scores for each offeror (both by criterion and overall total), except that the identities of the unsuccessful offerors may be withheld from release; rationales for the final evaluation scores, except to the extent they contain proposal information that an offeror has claimed to be confidential or proprietary business information; and the total amount of each offeror's financial offer.
- (6) Offerors receiving notice of contract award to another offeror will be provided the same information that would be released to members of the public under this Paragraph 2.13.6 and the Freedom of Information Policy, except that the evaluation scores assigned to the proposal of the offeror that is seeking the information will not be redacted.

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- (7) During the term of a contract, amounts the Airports Authority has paid pursuant to the contract will be released.
- (8) Requests for information not addressed in paragraphs (1) through (7) that is contained in records that have been prepared during, in conjunction with or as a result of an Airports Authority procurement will be considered in accordance with the Freedom of Information Policy.

### **2.13.72.11.6 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~~2.13.5). 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.

### **2.13.82.11.7 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



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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.

### **2.13.92.11.8 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.

### **2.13.102.11.9 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.

### **2.13.112.11.10 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.

### **2.13.122.11.11 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.

### **2.13.132.11.12 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

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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.

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### 3 **CONTRACT TYPES AND PROCEDURES**

Chapter 3 describes the different types of contracts used by the Airports Authority and it notes a preference for firm fixed price contracts. This chapter also includes a significant number of general contracting procedures including contractor license requirements, bonds, insurance, multiple and split awards, endorsement of vendors' products, and options.

A number of contract types based on compensation arrangement are available to provide needed flexibility in acquiring the large variety of materials, services, and construction required by the Airports Authority. The contract types are grouped by pricing arrangement into the two broad categories of fixed-price contracts and cost-reimbursement contracts. These two types vary according to (1) the degree of responsibility and risk assumed by the contractor for the costs of performance, and (2) the amount and nature of the profit incentive offered to the contractor for achieving or exceeding specified standards or goals. The specific contract types range from firm-fixed-price to cost-plus-award-fee.

Negotiated contracts may be of any type or combination of types that will promote the Airports Authority's interest except as restricted herein. The cost-plus-a-percentage-of-cost contract is a last resort contract that requires Procurement and Contracts Department Manager's approval prior to any usage. Its use is prohibited if federal funds are involved.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraphs 10.7.22 and 10.7.23 of this Manual for additional guidance on special requirements and restrictions.

#### **3.1 FIRM FIXED-PRICE CONTRACTS**

A firm-fixed-price (lump sum) contract provides for a price that is not subject to adjustment on the basis of the contractor's cost experience in performing the contract. This is the preferred form of contract for Airports Authority use. It places maximum risk and full responsibility for all costs and resulting profit or loss on the contractor. It provides maximum incentive for the contractor to control costs and perform effectively and, since the contractor's cost experience is not a factor in determining compensation, it imposes a

minimum administrative burden upon the contracting parties.

A firm-fixed-price contract is suitable for acquiring commercial products, construction, or services on the basis of reasonably definite, detailed specifications when the Contracting Officer can establish fair and reasonable prices at the outset, such as when-

- (1) There is adequate price competition;
- (2) There are reasonable price comparisons with prior purchases of the same or similar goods or services made on a competitive basis or supported by valid cost or pricing data or;
- (3) Performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a firm-fixed-price representing assumption of the risks involved.

Contracting Officers must keep in mind that if the contractor would have to place a significant contingency factor in their contract price to cover fluctuations in labor or material costs, or to protect themselves from their inability to realistically estimate the production costs of new items, then the use of a firm-fixed-price contract may not be appropriate.

#### **3.2 FIXED-UNIT-PRICE CONTRACTS**

The provisions of this type of contract provide for the upward or downward revision of the contract price based upon actual quantities of work performed; however, the contract must include an overall Not-to-Exceed amount. Estimated quantities are used in the solicitation to provide a competitive basis for determining the successful contractor. Contractors provide fixed-unit prices for each item. During

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contract performance, the contractor is paid for quantities of work actually performed at the unit prices offered.

Unit-price contracts are used where (1) quantities cannot be determined in advance within limitations that would permit a lump-sum offer without a substantial contingency, (2) quantities can change significantly during performance, or (3) offerors would have to expend unusual effort in making quantity take-offs. Contracts with unit pricing will include a variation in estimated quantity provision which provides for negotiated adjustments to the unit price of any item for which the actual quantity varies by 15 percent or more from the estimated contract quantity. The total amount of money paid to the contractor for each work item remains indeterminable until completion of the contract. Administratively, the Airports Authority must provide an adequate field force to verify actual quantities of work performed. If the nature of the "units" to be measured is such that the method of measurement is unclear, then the contract must include language that specifies the method of measurement.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.24 of this Manual for additional guidance on special requirements and restrictions.

### **3.3 COMBINED FIRM-FIXED/UNIT-PRICE**

A variant of the firm-fixed-price (lump sum) contract is the combination firm-fixed-unit-price contract. This type of contract should be used when it is not possible to determine the quantities required with reasonable accuracy prior to performance. The significant characteristic of this type of contract is that firm-fixed (lump-sum) prices are established for identifiable quantities of work and fixed-unit prices are established for only that portion of the work for which quantities are unknown or for which they cannot be reasonably forecast. If there are undefined areas of work which need to be included in the contract, a specific dollar allowance established by the Airports Authority shall be included in the Section III, Schedule. The contract must always include an overall not-to-exceed amount. Price evaluation for this type of contract is performed

by multiplying the fixed-unit prices by the estimated quantities and adding the extended price to the lump-sum portion of the offer.

The actual final contract price, i.e., the total amount ultimately paid to the successful offeror, is not the proposed price. Payment for the unit-price portion of the contract is made by multiplying the fixed-unit price by the actual quantities required to perform the work.

A variation in estimated quantity provision will be included in lump-sum/unit-price contracts. Such a provision provides for an equitable adjustment of the fixed-unit prices to be made where the actual quantity varies by more than 15 percent above or below the estimated quantity stated in the contract.

### **3.4 FIXED-PRICE WITH PRICE ADJUSTMENT**

The provisions for this type of contract provide for the upward or downward revision of the contract price upon the occurrence of certain contingencies that are specifically defined in the contract. These contingencies must be beyond the control of the contractor, e.g. industry-wide factors. Use of this type of contract is appropriate when serious doubt exists as to the stability of the market or labor conditions that will exist during an extended period of contract performance. It may also be appropriate when contingencies that would otherwise be included in the contract price can be identified and covered separately by a price adjustment provision. However, the contract must include an overall not-to-exceed amount. Close pricing is obtained by minimizing contingencies through price adjustment provisions; this shifts a portion of the pricing risk to the Airports Authority. In return for the price adjustment provisions, the contractor is expected to eliminate from the price those contingency factors covered by the price adjustment.

### **3.5 TIME-AND-MATERIALS CONTRACTS**

The time-and-materials contract provides for the procurement of goods and services on the basis of direct labor hours at specified hourly rates and materials at cost including, when appropriate, material

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handling charges. The charge for direct labor at specified fixed hourly rates includes wages, overhead, general and administrative expenses, and profit. The materials handling charge will include only costs clearly excluded from the labor hour rate. This type of contract shall include a ceiling price for each element and for the overall total that the contractor exceeds at its own risk. Although this type of contract provides for the payment of a fixed rate per unit of time, it is clear that unless the rate is insufficient to cover the contractor's costs, the total amount of profit under the contract increases proportionately as the number of hours increase. Therefore, this type of contract is used only after a determination that no other type of contract will suitably serve. It is used when it is not possible at the time of placing the contract to estimate the extent or duration of the work or to anticipate costs with any substantial accuracy. It is used primarily in the procurement of engineering and design services, special tooling, repair and maintenance, overhaul work, and work to be performed in emergency situations. Its use requires provision for adequate controls, including appropriate surveillance by Airports Authority personnel during performance, to give reasonable assurance that inefficient or wasteful methods are not being used. A variant of this type of contract used under the same circumstances is the labor-hour contract that differs from the time-and-materials contract in that no materials are supplied by the contractor. This type of contract shall also include a not-to-exceed cost ceiling.

### **3.6 COST-REIMBURSEMENT CONTRACTS**

This generic category of contracts provides for payment to the contractor of allocable and allowable costs. In addition to costs, most cost-reimbursement contracts also provide for the payment of a fee (profit) to the contractor in addition to costs. Cost-reimbursement contracts establish an estimate of total cost for the purpose of obligating funds and establishing a cost ceiling which the contractor may not exceed (except at the contractor's own expense) without the prior approval or subsequent ratification of the Contracting Officer. Cost-reimbursement type contracts are suitable for use when the nature and complexity of the procurement are such that the costs

of performance cannot be estimated with the accuracy necessary for a fixed-price contract. Since the actual costs of performance are the basis for payment to the contractor, it is essential that prior to contract award, the Contracting Officer verify that the contractor's cost accounting system is adequate for the determination of the reimbursable costs. As this type of contract gives a minimum incentive for efficient performance, provision must be made for appropriate surveillance by Airports Authority personnel to provide reasonable assurance that wasteful methods are not being used. Such contracts are used only after a finding that such method of contracting is likely to be less costly than other methods, and it is impractical to secure the necessary goods or services without the use of this type of contract.

### **3.7 INCENTIVE CONTRACTS**

Incentive contracts are designed to harness the profit motive to stimulate the contractor to perform at a lower cost, to produce a better product or service, or to cut down lead time in delivery dates. It is a goal when utilizing incentive contracts to impact the contractor's management decisions throughout the performance of the contract. Care must be taken to ensure that the contract is so structured that any contract options are fair from both the contractor and the Airports Authority's point of view. The incentive contracts can be categorized in two ways: those in which the contractor's additional profit or losses are determined on an objective basis or those contracts in which the contractor's profit or loss is determined in a subjective manner. The fixed-price-incentive contract and the cost-plus-incentive-fee contract are examples in the objective category, while the cost-plus-award-fee contract is the predominant type in the latter category.

### **3.8 INDEFINITE DELIVERY TASK CONTRACTS**

Task contracts allow the Airports Authority to acquire an indefinite quantity, within stated limits, of supplies or services, including construction services, during a fixed period, with deliveries or performance to be scheduled by placing orders with the contractor after the Airports Authority's requirement is defined.

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The ~~basic purpose~~ Airports Authority may make multiple awards of a Task Contract ~~is to provide an in-place contractual arrangement with a competitively selected Contractor that is ready, willing and able to undertake a number of jobs, or individual tasks, to firms capable of performing the naturework~~ described in the ~~contract~~ Task Contract's statement of work. The scope of the ~~task contract~~ Task Contract may be broad but not unlimited. ~~Work beyond the scope or over an authorized price of the Task Contract may not be performed under the task contract Task Contract and must be handled as a new procurement.~~

### 3.8-73.8.1 Use of Task Contracts

The Airports Authority utilizes Task Contracts ~~primarily as a means of mission support for the heavy workload generated by the aggressive capital construction program. Task Contracts may also be used for non-supply, services and construction services, requirements. They may be used~~ when appropriate to provide a contractual framework for ~~recurring, smaller to medium-sized jobs. This efficiency recurrent needs, and when needs must be met on a relatively short-term time-frame. Efficiency~~ results from reduced solicitation time; and streamlined SOWs compared to the time required if each individual task was competed using full and open competition procedures. Another important efficiency of Task Contracts is in getting the work completed on an expedited schedule ~~because Task Contracts use fully mobilized contractors.~~

Consideration should be given to identifying whether time or cost is the most limiting factor and which procurement method is most likely to yield the greatest benefit. Coordination between the requestor and the Contracting Officer; regarding applicability of a Task Contract, extent of competition, and proposed LDBE participation, is advisable necessary. The overarching objective is satisfying the Airports Authority's ~~mission~~ objectives consistent with the legal obligation to utilize full and open competition.

### 3.8-83.8.2 Guidelines for Using Task Contracts

#### (1) Task Contracts

For Task Contracts for standby construction services, ~~generally three~~ multiple contracts may be awarded on a competitive basis. ~~More may be awarded if needed~~ to support mission requirements. Each Task Contract ~~will~~ may not exceed \$2 million per year, except upon approval of the Manager ~~of the~~, Procurement and Contracts Department. CCP construction is also authorized two Task Contracts at \$4 million per year to handle mission requirements. The need for multiple task contract awards will be a joint determination between the requesting office and the Procurement and Contracts Department.

For Task Contracts for other goods and services, multiple contracts may be awarded on a competitive basis. Factors that may be considered in determining the number of contracts to be awarded include: (i) the scope and complexity of the requirements; (ii) the expected duration and frequency of task orders; (iii) the mix of resources a contractor must have to complete task orders; and (iv) the ability to maintain competition among the awardees through the contracts' period of performance.

A single Task Contract may be awarded if: (i) only one contractor is deemed capable of providing performance at the level of quality required because the services are unique or highly specialized; (ii) the Contracting Officer determines that the market is such that more favorable terms and conditions, including price, will be obtained if a single award is made; (iii) the expected cost of administration of multiple contracts will outweigh the expected benefits of multiple awards; (iv) the projected Task Orders are so integrally related that only a single contractor can reasonably perform the work; or (v) multiple awards would not be the best interests of the Airports Authority.

Task Contracts may be issued for a period not to exceed a one year base contract with two pre-



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priced one-year options unless an alternate arrangement is justified.

Competition for Task Contracts will be solicited on a full and open competition basis using both price and, if required, technical evaluation criteria (see Paragraph 2.2.9). Dependent upon the nature of the work, efforts will be made to solicit pricing on the basis of estimated quantities of standard units of work. This will facilitate pricing the follow-on work assignments. As an alternative to standard units of work, price competition may involve pricing estimated hours of various disciplines for which a requirement is anticipated. Architect/Engineering Task Orders are an exception; in accordance with standard procedures, A/E contracts will not be competitively priced.

The technical evaluation criteria will be evaluated based on written submittals unless it is determined to also require oral presentations by short-listed firms.

Examples of technical information that Contractors may be requested to submit for evaluation 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.

(2) Issuance of Task OrderOrders

After award of a Task Contract, the requesting office (generally the COTR) may request that an individual work assignment (Task Order) be issued against the Task Contract. A statement of work, ~~in-house~~independent cost estimate, contractor's proposal, a determination by the COTR that the contractor's estimated price and

quantities are services to be provided are fair and reasonable<sup>1</sup>, and a Requisition with necessary funds should be furnished to the Contracting Officer by the COTR.— Alternatively, the Contracting Officer may authorize the COTR to issue telephonic "call orders" to be followed-up by proper documentation in accordance with call order procedures established by the Procurement and Contracts Department.

~~(3)~~—

All Task Orders must fall within the specific scope of the underlying Task Contract. Task orders outside the scope of the underlying Task Contract shall not be issued and shall be handled as a new procurement.

Where multiple contractors have been awarded Task Contracts pursuant to a single RFP for task services, each task contractor shall be provided a fair opportunity to be considered for Task Orders to be issued under the Task Contract. The procedures to be followed for issuance of Task Orders, including procedures to ensure fair consideration of multiple task contractors for the Task Orders, shall be established by the Procurement and Contracts Department and shall be followed by COTRs and Contracting Officers when awarding Task Orders.

The Procurement and Contracts Department may establish different Task Order issuance procedures for different types of Task Contracts and for different Task Orders based, for example, on size or cost. In developing these procedures, the Procurement and Contracts Department shall work closely with the offices that utilize Task Contracts. Such procedures, at a minimum, shall provide a fair notice to Task Contractors of the intent to make a purchase, including a clear description of the requirement and the basis upon which the selection will be made, and afford Task Contractors the opportunity to submit an offer

<sup>1</sup> If the contractor's proposal is not price and quantity-based, then the COTR shall make a determination, based upon criteria appropriate to the procurement, that the contractor's proposal is fair and reasonable.

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and have that offer considered. The procedures may also provide for consideration of a Task Contractor's past performance on earlier orders under the contract, including quality, timeliness and cost control, potential impact on other Task Orders placed with a Task Contractor, any minimum order requirements, the amount of time Task Contractors need to make informed business decisions on whether to respond to potential orders, and whether Task Contractors could be encouraged to respond to potential orders by outreach efforts to promote exchanges of information, such as seeking comments from two or more Task Contractors on draft statements of work.

A Task Order may be awarded without providing a fair opportunity under the following situations: (i) the Airports Authority's need is so urgent that providing a fair opportunity would result in unacceptable delays; (ii) only one awardee is capable of providing the supplies or services at the level of quality required because the supplies or services ordered are unique or highly specialized; (iii) the order must be issued on a sole source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided all awardees were given a fair opportunity to be considered for the original order and is not out of scope; or (iv) it is necessary to place an order to satisfy a minimum guarantee.

### **3.9 PURCHASE OF GOODS INDEFINITE DELIVERY CONTRACTS**

Indefinite delivery type contracts are bilateral agreements which reserve to the Airports Authority the right to specify at a time subsequent to the execution of the contract, when and in some cases in what amounts and to where, the contractor is to make deliveries under the contract. The principal advantage of this type of contract is in the savings in handling and warehousing costs and the conservation of space. The method of pricing can be firm-fixed-price, or fixed-price with economic price adjustment. When appropriate, minimum and maximum limits on the size of each order can be set. There are three types of indefinite delivery type contracts: the definite quantity contract, the indefinite quantity contract, and the requirements

contract. Procedures for the use of these contracts and issuance of orders under each shall be issued by the Procurement and Contracts Department which shall work closely in developing the procedures with offices that utilize these contracts.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.25 of this Manual for additional guidance on special requirements and restrictions.

### **3.10 AIP AND OTHER GRANT-FUNDED PROCUREMENTS**

Contracts that include AIP or other similar grant funds must conform with mandatory provisions of the grant. Contracting Officers shall use the appropriate Standard Format solicitation provisions and contract/special provisions which include specific coverage for cost and pricing data, audit requirements, wage rates, DBE considerations, foreign trade restrictions, and others as required by the particular funding source.

### **3.11 GENERAL CONTRACTING PROCEDURES**

#### **3.11.73.11.1 Discounts**

Any trade and/or prompt payment discounts must be clearly stated. Any questions about what is being offered by the offerors must be clarified, resolved, and coordinated with Accounts Payable prior to contract execution. From an evaluation standpoint, prompt payment discounts shall not be considered in determining the low offeror unless this was specifically addressed in the solicitation.

#### **3.11.83.11.2 Quantity, Price, Delivery**

Contracts shall explicitly specify the quantity of goods or services ordered, the price, and the required delivery date/performance period.

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### ~~3.11.93.11.3~~ **FOB/Freight Payment Terms**

Unless there are specific reasons to do otherwise, Airports Authority solicitations will specify FOB destination as the Airports Authority warehouses at Reagan National or Dulles airports. FOB destination means that the contractor is responsible and pays the freight for delivery of the goods to the specified delivery destination. Title to the goods passes to the Airports Authority when the goods arrive at warehouse receiving dock and are accepted by the Airports Authority.

If the Contracting Officer has specific reasons which make it more advantageous to use a combination of FOB designation and freight payment terms other than "FOB Destination," the contract file will be documented.

### ~~3.11.103.11.4~~ **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.

### ~~3.11.113.11.5~~ **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:

Service	Regulatory Agency
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



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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.

### ~~3.11.123.11.6~~ **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.

### ~~3.11.133.11.7~~ **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.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.5.7.1 of this Manual for additional guidance on special requirements and restrictions.

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### ~~3.11.14~~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.

### ~~3.11.15~~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 10.7.26 of this Manual for additional guidance on special requirements and restrictions.

### ~~3.11.16~~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.

### ~~3.11.17~~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

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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.

### ~~3.11.18~~3.11.12 **Rental, Lease, and Installment Purchases**

#### ~~3.11.18.1~~3.11.12.1 **Rental or Lease**

The procurement process for the rental or lease of any materials, equipment or supplies (with no labor involved) will be handled in the same manner as the procurement of goods. However, hiring a contractor to provide equipment and personnel (operators) to perform a task requires a services contract.

The solicitation will specify (1) length of time, (2) numbers and types of equipment, (3) who will provide maintenance and repair service and insurance coverage, and (4) inspection at time of delivery.

#### ~~3.11.18.2~~3.11.12.2 **Lease/Installment Purchase**

The procurement process for the lease purchase or installment purchase of any materials or equipment will be handled in the same manner as the procurement of goods. A contract is issued in the full amount subject to availability of funds but it is only funded on an annual fiscal year basis.

### ~~3.11.19~~3.11.13 **Purchasing Used Equipment**

Purchases of used equipment may be negotiated by Contracting Officers within their delegated authority. If the nature of the used equipment is such that

competition could be secured, then a competitive procurement process should be used. However, if that approach is not available, then following approval of a determination in writing that only one sole source is available; a contract may be negotiated and awarded. Complete information describing the item must be provided by the requestor. The information furnished must include a written statement from a person who is technically knowledgeable of the type of equipment to be purchased, normally the end user, verifying the condition of the equipment, its future usefulness, and that its purchase would be in the best interest of the Airports Authority.

### ~~3.11.20~~3.11.14 **Samples**

There are situations when samples will be needed by the COTR to verify quality levels or to test offered materials to determine conformance with the specifications. A requirement for samples must be clearly indicated in the solicitation. Samples are the responsibility of the COTR and they should be properly labeled, stored, and controlled until no longer needed. Those not destroyed during testing may be returned at the offeror's expense. If, after 60 days, the samples have not been picked up and the offeror fails to provide disposition instructions, samples may be used or disposed of by the Airports Authority. If the items have significant reusable utility value, they should be disposed of using established property disposal procedures.

### ~~3.11.21~~3.11.15 **Multiple Awards and Split Awards**

Unless otherwise specifically indicated in the solicitation, the Airports Authority may award a multi-line item solicitation in whole, in part, or on an individual line item basis. Also, at its discretion the Airports Authority may make multiple awards based on responses received from a solicitation unless otherwise specifically indicated in the solicitation.

### ~~3.11.22~~3.11.16 **Contracting for Equipment Maintenance**

Contracting for equipment maintenance falls into two basic methods:

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(1) Full service maintenance normally requires the contractor to provide scheduled service, preventive maintenance, necessary repair parts and additional service calls as required under an annual contract at a firm fixed price. Full service maintenance contracts should be used only on an exceptional basis or when experience indicates that maintenance/repair on an as needed basis is not practical. In providing full service maintenance, contractors include in their costs all contingencies that might occur during the contract period; normally this results in higher costs to the Airports Authority.

(2) Maintenance/repair on an as-needed basis is normally provided on a time and materials cost basis. Materials and parts must be offered either at contractor's invoiced cost or on a percentage discount from manufacturer's published list or catalog prices. Time and materials contracts demand more effort by the receiving agency in monitoring actual hours expended, prompt identification and solution of problems, and cost control to assure the contractor's performance is not inefficient or wasteful. See Paragraph 3.5 for detailed information on time and materials contracts.

Solicitations for maintenance of equipment should identify the make, model, style, and the quantity of each type of equipment. Provisions may be included to add and/or delete equipment during the contract period on a prorated basis and for the loan of like equipment during extended periods of downtime. When maintenance is to be performed under contract on Airports Authority property at an off-airport site, the contractor will be required to provide evidence of insurance or other security, for the property to ensure the Airports Authority is protected from loss while the property is in the contractor's custody.

### ~~3.11.23~~3.11.17 **Use of Vendor's Standard Contract Form**

The use of a vendor's standard contract form should be avoided; Airports Authority contract forms are preferred.

### ~~3.11.24~~3.11.18 **Endorsement of Vendors' Products/Services**

It is the policy of the Airports Authority not to endorse the products or services of any vendor or manufacturer.

### ~~3.11.25~~3.11.19 **Allowable Cost Reimbursements**

Contractors shall submit only those costs that can be verified as legitimate and accurate for reimbursement. Contracting Officers shall approve for payment only those costs determined to be reasonable.

### ~~3.11.26~~3.11.20 **Maximum Allowable Profit**

This paragraph applies to maximum profit (fees) for cost-reimbursement type contracts or cost reimbursable line items. If a relatively minor change is issued which calls for essentially the same type and mix of work as the basic contract, the Contracting Officer may use the basic contract's profit rate as the pre-negotiation objective for that change.

For changes to fixed-price contracts that are negotiated on a cost-reimbursement basis, a maximum profit of 10 percent is allowable for work done by the prime contractor. A maximum 18 percent total profit shall apply to work done by any tier of subcontractor, including higher tier profit mark-ups. For example, if a second tier subcontractor does the work at 10 percent profit and the first tier profit mark-up is 5 percent, only 3 percent profit mark-up is available for the prime. Profit mark-up at any tier is limited to 5 percent. For example, if a first tier subcontractor does the work for 8 percent profit, the prime is limited to 5 percent maximum profit mark-up (in this case the total profit would be 13 percent).

The most important price aspect of a negotiation is the ultimate total cost to the Airports Authority rather than any particular cost element such as profit.

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### **3.11.273.11.21 Delivery Incentives**

Delivery incentives can be considered in those limited situations when early delivery is judged to be of great benefit to the Airports Authority.

The incentive structure should reflect both a positive (bonus) and a negative arrangement. Although the use of a bonus arrangement does not preclude the use of liquidated damages, their relationship must be given careful consideration. Delivery incentives may be applied to the entire performance period or only to a specific portion of the contract. There can be instances when it is necessary to have incentives attached to multiple performance aspects of the contract. As a general rule, a "cap" will be put on the incentive arrangement to protect the parties. Any use of delivery incentives must be approved by the Manager, Procurement and Contracts Department.

### **3.11.283.11.22 Performance Periods**

Contract performance periods must be realistic - not overly optimistic. The specified performance period will have a direct impact on the prices that will be offered. If the offerors discern that there is a high risk of their having to use overtime or other costly measures to meet the schedule, that will be reflected in the prices offered. To increase competition and to give a greater number of contractors the opportunity to do business with the Airports Authority, contracts will be periodically re-competed.

### **3.11.293.11.23 Options May Extend or Change Performance.**

Solicitations may include priced options for contract extensions or to change the performance required of the contractor. All options must fall within the scope of the original contract. The prices proposed for any options must be included in the total evaluated price for each offeror. This does not imply that the Airports Authority is obligated to exercise any or all of the options during the term of the contract.

The use of un-priced option years in contracts is not a common practice and a determination and finding must be prepared and approved by the Manager, Procurement and Contracts Department prior to the inclusion of an un-priced option in a solicitation. At the time of execution, an un-priced/unevaluated option requires Board approval as a sole source procurement action if the option is over \$200,000.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.27 of this Manual for additional guidance on special requirements and restrictions.

### **3.11.303.11.24 Award Alternates**

Although not a common practice of the Airports Authority, some solicitations may include one or more award alternate line items which the Airports Authority will either include or exclude in the contract at the time of contract award. The purpose of such award alternates is to enable the Airports Authority to consider the pricing of several alternate line items and then make award based on available funding or other considerations. Price will be evaluated based on the total pricing including the alternates selected by the Airports Authority for award.

### **3.11.313.11.25 Living Wage**

Specific services contracts, such as those listed below, will specify a minimum "living wage." The living wage is presently determined by averaging the current living wages specified by the City of Alexandria and Montgomery County. Other local jurisdictions which have adopted a living wage may be considered and used in calculating the average if deemed appropriate by the Airports Authority. The living wage will be specified in the solicitation and will apply to the entire term of the contract including option years.

The contracts currently subject to the living wage provision are:

Washington Dulles International Airport  
Custodial  
Grounds Maintenance



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Unarmed Security Guards

Ronald Reagan Washington National Airport  
Custodial  
Grounds Maintenance  
Unarmed Security Guards  
Window Washing

### ~~3.11.323.11.26~~ **Audit and Inspection of Records**

The following provision shall be included in all non-concession contracts except that it will not normally be used in Purchase Orders:

The Contractor shall maintain records and the Contracting Officer shall, until the expiration of five years after final payment under this Contract have access to and the right to examine any pertinent books, documents, papers and records of the Contractor involving the formation of the contract, transactions related to the Contract, for the purpose of inspection, making audit, examination, excerpts and transcriptions. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the Contracting Officer shall until the expiration of five years after final payment under the Contract have similar access to and the right to examine any pertinent books, documents, papers and records of the subcontractor(s) involving all aspects of the subcontract including formation.

The Contracting Officer shall have all of the aforementioned rights for all types of contracts including fixed price contracts. The rights include without limitation the right to examine costs. The Airports Authority's rights hereunder are in addition to any other audit and inspection rights under the Contract. The Airports Authority reserves these rights because cost information is frequently needed to investigate performance issues and whether it is in the Airports Authority's interest to exercise other reserved rights under the contract. The Contracting Officer shall have the broad rights of audit and inspection including but not limited to, the right to examine books, records, documents and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever

nature that have been incurred for the performance of this Contract. Such right of examination shall include inspection at all reasonable times of the Contractor's labor, materials, plant or such parts thereof, or other costs or revenues as may be expended or received as a part of the performance of the Contract.

When costs are a factor in any request for an equitable price adjustment pursuant to a remedy granting provision of the Contract, the Contractor shall maintain separate accounts by specific designation or other suitable accounting procedure of all incurred segregative direct costs, less allocable credits. Failure to maintain such cost records is a bar to any claim, legal or equitable, for such costs.



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## 4 **EQUAL OPPORTUNITY CONTRACTING PROGRAMS**

Chapter 4 describes the Equal Opportunity Contracting programs including the Airports Authority's Local Disadvantaged Business Enterprise (LDBE) program and the federal Disadvantaged Business Enterprise (DBE) program. It describes the qualifications and certification process for both the LDBE and DBE programs. It also includes the commitments that are required to be made by offerors and the Airports Authority's post-award compliance verification.

The Airports Authority's contracting opportunities are open to all and it is Airports Authority policy that no person or firm will be discriminated against because of race, color, national origin, sex, or disability in the award of Airports Authority contracts. Further, contractors shall not discriminate on the basis of race, color, national origin, sex, or disability in the performance of Airports Authority contracts.

### **4.1 LDBE/DBE PARTICIPATION**

It is the policy of the Airports Authority to seek significant participation in its contracts by local small businesses and by small businesses owned by minorities, women and disadvantaged persons. The Airports Authority has two programs for achieving this policy objective - a Disadvantaged Business Enterprise (DBE) program for federally funded contracts and concession contracts and a Local Disadvantaged Business Enterprise (LDBE) program for contracts that do not include any federal funds. The Airports Authority's Equal Opportunity Programs Department is responsible for DBE and LDBE program procedures and oversees program coordination and compliance.

### **4.2 DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

The DBE program implements the Department of Transportation's regulations in 49 CFR Parts 23 and 26, as amended. It is the policy of the Airports Authority to provide opportunities for socially and economically disadvantaged businesses and to encourage their participation in federally funded Airports Authority contracts and in other contracts subject to the federal DBE program. Airports Authority contracts that have DBE goals are generally in the areas of professional architecture and engineering services, construction and construction-

related services and ~~airport~~ concessions. Overall DBE goals for procurement contracts and for concession contracts are established by the Board of Directors and submitted to the Federal Aviation Administration and the Federal Transit Administration for concurrence. The manner in which the overall DBE goals are met for individual contracts (e.g., through contract goals or through other methods) is coordinated by the Equal Opportunity Programs Department and the Contracting Officer, consistent with the Airports Authority's DBE Program.

A DBE is defined in the U.S. Department of Transportation regulations, 49 CFR Part 26, as a small, for-profit business concern which is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals. In addition, a DBE firm's management and daily business operations must be controlled by one or more of the socially and economically disadvantaged individuals who own it, and it must meet other requirements set forth in 49 CFR Part 26. For DBE purposes, a "small business concern" is a small business as defined in Section 3 of the Small Business Act and relevant regulations, whose average annual gross receipts, as defined by SBA regulations (13 CFR 121.402), over the firm's previous three fiscal years do not exceed the limit set by the Secretary of the U.S. Department of Transportation under 49 CFR 26.65(b). Size standards for airport concession DBE (ACDBE) firms are determined under 49 CFR 23.33. "Socially and economically disadvantaged individuals" include individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are: (1) determined to be socially and economically disadvantaged individuals on a case-by-case basis or

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(2) who are in one of the following groups, members of which are reputedly presumed to be socially and economically disadvantaged: Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans (all as more specifically defined in 49 CFR 26.5); women; and any other minorities or individuals found to be disadvantaged by the Small Business Administration. Further detail concerning the definition of “socially and economically disadvantaged individuals” is provided in 49 CFR 26.5.

#### **4.3 LOCAL DISADVANTAGED BUSINESS ENTERPRISE (LDBE) PROGRAM**

The Airports Authority's LDBE program provides for participation by eligible local small business enterprises in Airports Authority contracting opportunities that are not funded in part or in whole with federal funds. This program is race and gender neutral. A portion of the Airports Authority's contracting opportunities may be set-aside for eligible LDBEs, and LDBE participation requirements are established for many Airports Authority contracting opportunities. Other LDBE program features include:

- (1) Size standards that are established by the U.S. Small Business Administration (SBA) for specific industrial codes to enhance the participation and success of LDBEs;
- (2) Relaxation of bonding and insurance requirements for contracts valued at \$100,000 or below;
- (3) Elimination of cost of bonding and insurance from the Airports Authority's consideration of the bid or offer price for construction contracts.
- (4) Pre- and post-award compliance procedures; and
- (5) Outreach efforts to encourage participation.
- (6) An LDBE is defined as a small business concern that is organized for profit and that is located within a 100-mile radius of the District of Columbia's zero mile marker. Those business

entities located within counties that fall partially within the aforementioned boundary are also eligible to participate in the Airports Authority's LDBE program. "Located" means that as of the date of its LDBE application, a business entity has an established office or place of business within a city, county, or town within the 100-mile radius referenced above. Evidence of whether a business is "located" within the region include: (1) an office address within the 100-mile radius that is not a post office box and that is not an office principally devoted to the performance of work on a single project, and (2) the firm's owner, management, or the firm's employees are present and conduct the firm's business on a regular and frequent basis at that address. In addition, the firm must have one or more of the following: (1) a business license or registration to do business locally; (2) receipts showing payment of local taxes by the business; (3) current performance of work in the local area; or (4) other evidence that demonstrates that the business entity has an established local presence, and that its local presence is not just in connection with performance of a contract or project that it has received, or that it anticipates receiving, from the Airports Authority or any other entity. A residential address will not be considered an office address unless the firm demonstrates to the Airports Authority that the residence is used on a full-time basis during business hours for conducting the firm's business.

A "small business" is defined, for LDBE purposes, as a firm that is not dominant in its field, and that meets the SBA's small business size standards for the goods or services it will be providing in a specific solicitation. The Airports Authority uses North American Industry Classification System (NAICS) in classifying a firm and determining the associated SBA size standard. The receipts of the business or the number of employees, whichever is applicable to the size standard in question, of all affiliates will be counted in determining size of the firm. The Airports Authority uses the Small Business Administration regulations, 13 CFR Part 121, as guidance in determining whether firms are affiliates of each other. A firm is not considered dominant in its

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field of operation when it does not exercise a controlling or major influence in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration will be given to all appropriate factors including volume of business, number of employees, financial resources, and competitive status or position.

#### **4.4 VOLUNTARY MBE AND WBE PARTICIPATION**

The Airports Authority encourages the participation of minority-owned and women-owned business enterprises (MBE and WBE) in Airports Authority contracts, even if they do not qualify for certification under the DBE or LDBE program or do not wish to go through the certification process. The Airports Authority may establish voluntary MBE/WBE goals for its contracts in addition to the LDBE participation requirements and may conduct outreach to encourage MBE/WBE participation. Achievement of MBE/WBE goals by contractors is strictly voluntary.

#### **4.5 LDBE AND DBE CERTIFICATION**

A firm must be certified in order to participate in the Airports Authority's DBE and LDBE programs. A firm may be certified for up to five North American Industry Classification System (NAICS) codes at any one time. The Airports Authority will review each certification applicant's qualifications and grant or deny certification based on its own findings. The Airports Authority also requires LDBE firms to apply for recertification at intervals specified by the Airports Authority. Once a firm is certified as a DBE, it remains certified unless it is decertified by the Airports Authority, or by the UCP. The Airports Authority may decertify a firm at any time if it determines that the firm no longer meets the Airports Authority's eligibility requirements for certification.

DBE Certifications in the Commonwealth of Virginia are handled by the Virginia Unified Certification Program (Virginia UCP). A firm interested in Airports Authority DBE contract opportunities will apply for DBE certification by applying either to the Airports Authority or to the Virginia Department of Minority

Business Enterprise. Once certified by the Virginia UCP, a firm's DBE certification will be accepted by all recipients of U.S. Department of Transportation grant funds within Virginia. Information on the Virginia UCP can be obtained from Equal Opportunity Programs Department (see Appendix B, Points of Contact). DBE Certifications granted by other DBE certifying agencies in the region may be given reciprocity by the Airports Authority under agreements between the Airports Authority and those certifying entities.

The Virginia UCP requires firms to be certified prior to the due date for solicitation offers. Firms that are certified as DBE after the solicitation offer due date cannot be counted toward the DBE goal for that solicitation.

Certification applications and information on the DBE or LDBE programs can be obtained by contacting the Equal Opportunity Programs Department.

#### **4.6 DETERMINATION OF LDBE/DBE POTENTIAL**

The Airports Authority's Equal Opportunity Programs Department reviews the scope of work/technical specifications of upcoming contract solicitations to identify the potential to have the work performed by LDBE/DBE, firms. This is done by examining the types of work or products involved and, for construction contracts, the approximate dollar distribution by discipline, as well as any recommendations from the requestor. The LDBE/DBE resources shall be identified to determine the appropriate DBE or LDBE participation goals or requirements.

If there are sufficient numbers of viable LDBE firms (generally at least five firms) that are technically and financially capable of performing the contract's requirements the Airports Authority may, in its sole discretion, choose to set aside the contract opportunity exclusively for LDBEs. See Paragraph 1.1.74-2.1 for additional information on the set aside requirement.

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#### **4.7 PROPOSING DBE AND LDBE PARTICIPATION FOR AUTHORITY CONTRACTS**

Airports Authority contract solicitations will state whether there is a DBE participation goal or an LDBE participation requirement, and if so, what it is. The following applies to all offers submitted in response to an Airports Authority solicitation that includes a DBE goal or LDBE requirement.

- (1) In order to conform to any Airports Authority solicitation in which there is a DBE goal or LDBE requirement, the offeror must either commit to the DBE goal or LDBE requirement in its offer, or submit with its offer a request for a good faith efforts waiver of the goal or requirement. Offers that do not conform to these requirements will not be considered. Unless otherwise specified in the solicitation, an offeror will be deemed to have committed itself to achieving the DBE goal or LDBE requirement by signing its offer and not submitting a waiver request.
- (2) 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 which may be dealt with by the Airports Authority through communications with the offeror prior to contract award. Unless the Airports Authority declares otherwise, such communications with offerors do not constitute "negotiations" or "discussions" as these terms are used herein and do not require communication with other offerors.
- (3) Specific details regarding the types of DBE/LDBE participation permitted, the manner in which participation will be counted toward the DBE goal or LDBE requirement, the documents and other information that must be submitted relating to the proposed DBE/LDBE participation, and other DBE/LDBE participation conditions will be set forth in the contract solicitation.

#### **4.8 GOOD FAITH EFFORTS WAIVERS**

If an offeror is unable to meet all or any part of a DBE goal or LDBE requirement, it must submit a Request for a Waiver of the goal or requirement with its offer. The Request for Waiver must be accompanied by documentation that clearly shows that the offeror has made a good faith effort to meet the DBE participation goal or LDBE requirement. The Request for Waiver must include a detailed report of the efforts made by the offeror to meet the DBE goal or LDBE requirement and must be sufficient to satisfy the Airports Authority that the requested waiver is justified. The Request for Waiver form included with the solicitation describes efforts that an offeror may make. That list is not intended to be exclusive or exhaustive.

Efforts that are merely pro-forma are not good faith efforts to meet the goal. Efforts to obtain DBE or LDBE participation are considered pro-forma, even if they are sincerely motivated, if given all relevant circumstances they could not reasonably be expected to produce a level of participation sufficient to meet the DBE goal or LDBE requirement and other measures were reasonably available. For example, advertising or bulk mailings, alone or together, are considered pro forma and not good faith efforts unless followed up with telephone calls and/or correspondence consistent with normal business practice. If the DBE or LDBE expresses an interest in the opportunity or makes an offer or proposal, the offeror must demonstrate that it made a reasonable effort to pursue the expression of interest or to negotiate with the DBE or LDBE.

The Airports Authority's Equal Opportunity Programs Department will assist offerors by identifying certified LDBE and DBE firms. A copy of the Airports Authority's directory of LDBE and DBE firms can be obtained on the Airports Authority's website [www.mwaa.com](http://www.mwaa.com) for information only. The Airports Authority does not warrant or guarantee the performance capability of firms listed in the directory.

#### **4.9 PREAWARD SUBSTITUTIONS**

Upon a finding by the Airports Authority that the offeror acted in good faith in attempting to meet the DBE goal or LDBE requirement, the offeror may: (i)



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be permitted by the Airports Authority to substitute DBE or LDBE subcontractors for one or more subcontractors named in its offer; (ii) obtain one or more DBE or LDBE subcontractors to perform the work originally designated for a DBE or LDBE joint venture partner; or (iii) be permitted to achieve the DBE goal or LDBE requirement through alternative means that are satisfactory to the Airports Authority. The circumstances in which this may be allowed include but are not limited to a DBE's or LDBE's:

- (1) Failure to qualify for DBE or LDBE certification if the firm was proposed in good faith as an LDBE or DBE by the offeror
- (2) Cessation of business for causes beyond the control of the offeror
- (3) Bankruptcy or insolvency
- (4) Inability to furnish any required performance or payment bonds
- (5) Inability to obtain, or loss of, a license necessary to the performance of work by the DBE or LDBE
- (6) Failure or refusal to execute an agreement with the offeror, but only where the Airports Authority's Contracting Officer can determine with reasonable certainty the terms of the agreement and the DBE's or LDBE's failure to execute the agreement has not been caused by changes that the offeror has made to the agreement
- (7) Failure to comply with the terms and conditions of its agreement with the offeror
- (8) Voluntary decision not to participate on the project
- (9) Inability to perform a commercially useful function, or to perform work of the nature and scope claimed for it.

#### **4.10 POST-AWARD COMPLIANCE WITH DBE GOAL AND LDBE REQUIREMENTS**

The Airports Authority will conduct post-award compliance reviews to ensure that the DBEs or LDBEs the contractor proposed to use are in fact performing the work promised in the offer and that the DBE or LDBE is being paid the amount shown on the documents provided to the Airports Authority by the offeror prior to the Airports Authority's award of the contract to the offeror. The specific manner in which the contractor must demonstrate its compliance with the DBE and LDBE participation provisions will be set forth in the contract.

The contractor may be found to be in non-compliance with its DBE or LDBE commitment to the Airports Authority if it fails to meet the commitments it made in its offer. The following are examples of non-compliance:

- (1) The terms of a subcontract with a DBE or LDBE do not agree with the documents provided to the Airports Authority prior to award.
- (2) A firm other than the DBE or LDBE listed in the documents provided to the Airports Authority prior to award is performing the subcontract work, unless a substitution was granted by the Airports Authority.
- (3) The contractor is purchasing supplies or materials when the contractor represented to the Airports Authority that a DBE or LDBE would be purchasing the supplies.
- (4) The contractor requires the DBE or LDBE to perform additional or different work than shown in the documents provided to the Airports Authority prior to award without additional compensation and without informing the Airports Authority.
- (5) The contractor is paying the DBE or LDBE less than was agreed and shown in the documents provided to the Airports Authority prior to award without cause.



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- (6) The contractor is not paying the DBE or LDBE in accordance with the payment provisions of their agreement.
- (7) The contractor fails to submit the required post-award documentation of DBE or LDBE participation.
- (8) The DBE or LDBE enters into agreements with other firms for supplies or to perform the contract work without the Airports Authority's approval.
- (9) The DBE or LDBE is not performing a commercially useful function.
- (10) The DBE or LDBE is no longer eligible to be certified as a DBE or LDBE, except that growth in the DBE or LDBE's business that causes it to exceed the applicable size standard during the term of its contract will not be a basis for finding the contractor in non-compliance with its DBE or LDBE commitment.

If the contractor is found to be in noncompliance, the Airports Authority may impose appropriate sanctions, such as withholding payments or terminating the contract in accordance with the contract's Default provision. If necessary, the Airports Authority may debar the firm under the provisions of Chapter 9.

In unusual situations, the Airports Authority may permit the contractor to make post-award DBE or LDBE substitutions consistent with the principles stated in Paragraphs 4.9(1) - 4.9(9) for pre-award substitutions.

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## 5 **CONTRACT ADMINISTRATION**

Chapter 5 describes various aspects of contract administration including the pre-performance conference for the successful offeror, the role of the Contracting Officer's Technical Representative, contract modifications, payments, different termination and closeout procedures including the contractor's release of claims.

### 5.1 ***PRE-PERFORMANCE CONFERENCE***

Pre-performance Conferences, referred to as pre-construction conferences for construction contracts, may be convened prior to the start of construction projects and as determined to be necessary by the Contracting Officer for other types of contracts. The agenda includes:

- (1) Introductions of key personnel from both parties,
- (2) Insurance discussion including OCWIP responsibilities,
- (3) COTR designation letter and responsibilities,
- (4) Safety and security presentation,
- (5) Schedule of deliverables,
- (6) Invoicing procedures including the fact that the Airports Authority recommends that payments be made via electronic transfer of funds (such requests must be submitted to the Contracting Officer for review and forwarding to Accounts Payable),
- (7) LDBE/DBE presentation, if desired by Equal Opportunity Programs Department,
- (8) Publicity releases must be approved by the Contracting Officer prior to release to the media, and
- (9) Contractual and field procedures and restrictions.

### 5.2 ***AWARD AND NOTICE-TO-PROCEED (NTP)***

Unless otherwise authorized by the President and Chief Executive Officer, staff shall not authorize contractors to commence performance under a contract before the effective date of contract award ( i.e., the date on which the contract is executed by the contractor and the Contracting Officer). In the event performance is authorized to commence prior to award, the Contracting Officer shall ratify such performance at the time the contract is awarded.

For construction and other contracts that use an NTP procedure, Contracting Officers shall ensure that contractors are aware that they must not commence contract performance until such time as they receive notice-to-proceed (NTP). In some circumstances, the NTP may be issued concurrently with contract award; however, the Contracting Officer must ensure that all necessary prerequisites for commencement of performance (such as OCWIP enrollment) are in place.

### 5.3 ***CORRECTION OF MISTAKES AFTER AWARD***

#### ~~5.3.1.1~~ ***5.3.1 Correction by Modification***

When a mistake in a contractor's offer is not discovered until after the award, the mistake may be corrected by contract modification if correcting the mistake would be favorable to the Airports Authority without changing the essential requirements of the specifications.

#### ~~5.3.1.2~~ ***5.3.2 Other Possible Actions***

In addition to the situation contemplated in Paragraph ~~5.3.1.1~~ 5.3.1 above, if a mistake in a contractor's offer is discovered after award, the Airports Authority may:

- (1) Rescind the contract.
- (2) Reform the contract to delete the items involved in the mistake or to increase the price and the contract price as corrected does not exceed that of the next lowest acceptable offer in response to the solicitation.
- (3) Make no change to the contract if the evidence does not warrant a determination under Paragraph ~~5.3.1.1 or 5.3.1.2~~ 5.3.2, above.

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### ~~5.3.1.3~~ **5.3.3 Clear and Convincing Evidence**

The actions authorized by Paragraphs ~~5.3.1.1~~**5.3.1** and ~~5.3.1.25~~**5.3.2** above may be made only on the basis of clear and convincing evidence that a mistake in offer was made and it must be clear that the mistake was mutual or, if unilaterally made by the contractor, the mistake was so apparent that the Contracting Officer should be charged with notice of the probability of mistake.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.28.

### ~~5.4~~

Planning for contract modifications requires that Contracting Officers ensure that new procurements are distinguished from work that is already within the general scope of the contract. Contracting Officers must be alert to contractors asserting that new work is involved as a means to recover cost overruns. New procurements will be processed in accordance with the procedures set forth in Chapter 2. Adding services that are severable from the existing project is an example of new procurement. Another example of new procurement is the addition of tasks that are unrelated to the tasks called for by the existing contract. Adding new work that is not within the existing contract's general scope of work shall be treated as new procurement.

Additional work can be added to an existing contract, whether minor or of considerable magnitude, if the work is within the general scope of the existing contract. In such case, a contract modification by supplemental agreement may be made.

### **5.4.7 Examples of Modifications Within General Scope**

(1) Ordering additional work in accordance with the applicable contract "Changes Provision" that was not originally identified but is now required and the nature of the work is an integral part of the existing contract;

~~(2) Furnishing additional details to add specificity or clarity to better define the scope of work;~~

~~(3) Ordering work that was contemplated and priced or anticipated in the contract and that is being exercised as a right originally reserved and understood;~~

~~(4) Extending the contract performance period because it took longer than planned to accomplish the original scope of work; or~~

~~(5) Eliminating work that was in the contract but is no longer required.~~

### ~~5.4.8~~

If work beyond the scope of an existing contract is to be undertaken it must be performed under a new contract awarded with full and open competition or a limited competition contract if it meets the requirements of Paragraph 1.2.1. An existing contract may be used only if justified as a sole source in accordance with Paragraph 2.10 and with approval of the Manager, Procurement and Contracts Department. In addition, Board approval is required if the work being added is over \$200,000. However, the over \$200,000 Board approval is not required if a categorical exception applies in accordance with Paragraph 1.2.

The decision to add new work to an existing contract should include consideration of the following factors:

~~(1) The disadvantage of not having the benefit of full and open competition to achieve the most favorable price for the Airports Authority.~~

~~(2) Whether new procurement will greatly extend the time within which the existing contract could be completed.~~

~~(3) The possible time benefits to the Airports Authority of using a contractor who is already mobilized and working.~~

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- (4) ~~Compatibility of contract terms and conditions between new work and existing work.~~
- (5) ~~The quality of work being done by the contractor and the cooperation, ability, and willingness of the contractor to take on additional work.~~

## **5.4 CHANGE ORDERS/CONTRACT MODIFICATIONS**

Any change in the price or terms of a contract may be authorized by the Contracting Officer only after reviewing the circumstances giving rise to the change and making a determination that the change falls within the scope of the contract. Any change authorized by the Contracting Officer requires a modification of the contract by issuance of either a change order or a contract modification. A change order or contract modification shall not be effective until the order or modification has been approved and signed by the Contracting Officer and funds for the change have been obligated.

Changes orders and modifications to a contract that do not fall within the scope of the contract must be treated as a new procurement.

Within-scope work is defined as work that an offeror would reasonably expect to occur at the time that the offeror submitted its proposal. Work not contemplated by the original solicitation will not be considered in scope, even if the work has since become integral to the project. Modifications that significantly increase the dollar value of the contract may also be considered out of scope. For example, if a contract has an original value of \$10,000, a modification to add \$1 million to the contract may be so fundamental a change that the modification be considered out of scope.

### **5.4.35.4.1 Types of Modifications**

Regardless of their source, all contract modifications must be in writing and be issued by the Contracting Officer as one of the following:

- (1) An administrative change (unilateral).
- (2) A change order (unilateral).
- (3) A supplemental agreement (bilateral).

Unilateral modifications require only the Contracting Officer's signature but supplemental agreements must be executed by both parties to the contract.

### **5.4.3.15.4.1.1 Administrative Changes**

Administrative changes, such as a change in the contractor's address, should be reflected in a formal contract modification even though the rights and obligations of the parties may not be affected.

### **5.4.3.25.4.1.2 Unilateral Change Order/Notice**

Contracts issued by the Airports Authority contain a provision entitled "Changes." The language of the provision varies depending upon the type of contract; in essence the Airports Authority has a unilateral right to direct changes within the ~~general~~ scope of the contract. Although the Airports Authority prefers to "forward price" changes to a contract so that costs are known and agreed to prior to commencing work, sometimes that is not practicable particularly in construction contracts when time is of the essence. It may be necessary for the Contracting Officer to issue a signed Change Notice requiring the contractor to commence specified work on a time and materials basis, keep separate records of the costs associated with the changed work, and to submit within 30 days a proposal requesting an equitable adjustment to the contract. Unilateral modifications can also be used by the Contracting Officer to issue decisions in disputes and terminations, and to exercise contract options.

### **5.4.3.35.4.1.3 Bilateral Supplemental Agreements**

A contract modification (Supplemental Agreement) is negotiated and incorporated in the contract to adjust the cost, performance time and scope of work or other contract provisions as a result of work directed under a unilateral Change Notice/Order. Supplemental Agreements must not delete any mandatory provisions (for example, those required for federally funded contracts) nor can the Contracting Officer consent to a waiver of any of the substantive rights of the Airports Authority without consideration.

The Contracting Officer, when analyzing the contractor's proposal, should determine whether an

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audit would be appropriate in determining the validity of the cost and pricing data submitted. Negotiation of adjustments can be complicated when a change results in both deletions from and additions to the work. In the event agreement is not reached, the Contracting Officer may issue a unilateral change subject to the Disputes provision. However, it is preferable to achieve a bilateral adjustment.

#### 5.4.3.45.4.1.4 Impact of Modifications on DBE/LDBE

When modifications increase or decrease the total dollar value of the contract, the contractor shall make best efforts under the circumstances to maintain the DBE or LDBE percentage participation on the contract. The contractor must submit revised documentation acceptable to the Airports Authority, which reflects changes in the DBE or LDBE participation associated with the modifications to the contract.

#### 5.4.45.4.2 Preference for Bilateral Contract Modifications

Notwithstanding the contractual right to make unilateral changes within the meaning of the Changes provision, contract modifications other than the exercise of priced options and terminations, should be issued as bilateral supplemental agreements. However, a unilateral change would be appropriate in cases of emergency or where delay in issuing the change would seriously affect the project and possibly result in increased costs or unacceptable schedule changes. The impact of the change on price and performance schedules should be negotiated and issued as a firm-fixed price or as a not-to-exceed bilateral agreement.

#### 5.4.55.4.3 Reopening a Closed Contract

It may occasionally be in the Airports Authority's best interest to execute a Supplemental Agreement for additional work to be performed under a closed contract, if such work falls within the specific scope of the contract. As an example, if a contractor performed \$100,000 worth of pipe installation and two months after the contract was properly completed and

closed, it was discovered that an additional \$8,000 of pipe was needed to fully utilize the system. There may be time and cost efficiencies involved in (1) preparing a Requisition with attached statement of work to simply add this relatively small increment of work that is within the ~~general~~ scope of the closed contract, (2) securing a price proposal from the contractor, (3) negotiating a price and performance period, and (4) executing a Supplemental Agreement with the contractor to reopen the contract with all of its terms and conditions for the purpose of accomplishing the added work.

Several conditions must be satisfied for this reopening procedure to be used. The work being added must be within the scope rather than new procurement as described in Paragraph ~~Error! Reference source not found.~~ 5.4. If beyond the scope of the contract, ~~a sole source justification (approved by the Board of Directors if over \$200,000) shall work must be included in the contract file handled as a new procurement.~~ The contractor should be contacted early in the process to determine its willingness to reopen the old contract and to do the additional work (assuming an acceptable price and performance period can be negotiated). The quality of work done by the contractor on the old contract must be found to be acceptable. The timing of the reopening must be within one year of the close-out date, the cost of work being added must not exceed \$500,000, and it may not be more than 20 percent of the closed-out contract amount. In reopening any contract, the Contracting Officer shall ensure that the Airports Authority's interests are protected; for example, if it is a construction contract, OCWIP coverage must be reinstated and bonds must be provided. Any time this authorization to reopen a contract is used, a determination and findings shall be prepared for the contract file with appropriate justification and be signed by the Manager, Procurement and Contracts Department. Adequate funds must be made available on an approved Requisition provided by the requestor. The Contracting Officer must consider insurance and bonding requirements for the newly added work.

The Contracting Officer must get another Contractor's Release from the contractor upon completion of the added work.



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**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.29 of this Manual for additional guidance on special requirements and restrictions.

## **5.5 PAYMENT CONSIDERATIONS**

The Airports Authority makes progress payments, when provided for by the contract, in return for demonstrated progress toward contract completion. Contracting Officers, COTRs, and financial personnel ensure payments legitimately due to contractors are made promptly.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.30 of this Manual for additional guidance on special requirements and restrictions.

### **5.5.75.5.1 Electronic Transfer of Funds**

The Airports Authority recommends that payment be made by electronic transfer of funds (ETF) directly to the contractor's financial institution. In order to encourage contractor participation in the ETF program, this subject shall be covered early in the contract period such as during pre-performance conferences. The use of ETF benefits both the contractor and the Airports Authority; it is efficient and effective.

Contractor requests to initiate such service including bank name, address, ABA number, bank account number, Federal Tax ID Number, whether or not this is a "1099 Contractor," an email address to which notification of payment will be sent, contact person, and telephone number shall be submitted in duplicate with separate letters to both Accounts Payable and to the Contracting Officer. After ensuring that the correspondence is signed by the contractor's signatory of the contract, the Contracting Officer shall approve the request and send to Accounts Payable. Any subsequent changes to the ETF shall follow the same procedure. In addition to the EFT information, contractors are required to submit an IRS Form W-9 to Accounts Payable.

### **5.5.85.5.2 Timeliness of Payments**

The Airports Authority's best efforts will be directed toward making payment not later than the 30th day after receipt by Accounts Payable of an acceptable invoice except as follows:

- (1) In those limited circumstances when a specific payment date is provided for in the contract, payment will be made as close as possible to, but not later than, that date.
- (2) If a time discount is available, payment may be made prior to a certain date in order to take advantage of the discount.
- (3) A final payment shall not be made until the contractor furnishes a Contractor's release. A copy of the release shall be furnished to Accounts Payable.
- (4) When the contract provides for withholding retainage from progress payments or liquidated damages and the circumstances are such that withholding is appropriate. The Contracting Officer shall enforce such provisions and maintain a record of amounts withheld, including the basis for withholding.
- (5) When elements of the amount invoiced by the contractor are not acceptable because they are vague or incomplete, because of poor workmanship, or because of lack of progress;
- (6) When the contractor has been overpaid or otherwise owes the Airports Authority money as a result of the contractor's actions or inactions under the contract;
- (7) When it is appropriate to apply a significant setoff or a recoupment. A setoff is a deduction from payments due the contractor under one contract for sums due the Airports Authority under one or more other contracts. Recoupment is a deduction of sums due the Airports Authority (damages for delay or defective performance, warranty costs, repair costs, and the like) from the payment due.

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(8) As a result of judicial action or applicable law.

Prior to taking action under (7) or (8) above, Contracting Officers will coordinate with the Office of General Counsel.

Nonpayment may be damaging to a contractor's business and may jeopardize performance. Therefore, the Contracting Officer must carefully consider the reasons for withholding or refusing payment, and should process complaints regarding payment expeditiously. If time permits and it is appropriate to do so, the Contracting Officer will notify the contractor and make a reasonable effort to reach a resolution prior to withholding.

### **5.5.95.5.3 Prepayments**

Although the general rule is that no contract payments can be made until the service or material has been received by the Airports Authority, there are exceptions such as payment schedules tied to specific dates, or partial prepayments required for certain material purchases. In any prepayment situation, the Contracting Officer shall ensure that good business judgment is used including providing for security of the prepayment. For example it may require provisions for the Airports Authority to gain title upon delivery of any material purchased or that a separate bond is furnished to protect the Airports Authority's interest. Instances of advance/prepayments will be documented as part of the contract file.

**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.

## **5.6 SUBCONTRACTOR NON-PAYMENT**

The Airports Authority has an interest in prompt payment of subcontractors from the standpoint of fairness and encouragement of their good performance. The Airports Authority also has an interest in ensuring that its policies support the development and viability

of small businesses, including minority business enterprises and woman business enterprises.

Subcontractors have no privity of contract with the Airports Authority, and the Airports Authority does not become involved with business relationships between primes and their subcontractors. For example, non-payment of a subcontractor may relate to untimely or poor quality performance by the subcontractor. The Airports Authority is not able to adjudicate blame or responsibility in such a situation. Generally speaking, the Airports Authority does not know the terms of payment that have been agreed to between the prime and subcontractor. Sometimes subcontractors believe they are entitled to progress payments when their contract specifies only one payment upon completion.

The payment situation between the prime and subcontractor may relate to a prior obligation that in no way involved the Airports Authority.

Primes are completely responsible for the quality of performance by their subcontractors. One of the strongest management tools available to a prime is control of payments to subcontractors.

On the other hand, tight control of payments to subcontractors can negatively affect the subcontractor cash flow with potentially serious ramifications.

If either the prime or subcontractor is a DBE or LDBE, the Equal Opportunity Programs Department is available to facilitate resolution of subcontractor non-payment issues/concerns, perhaps even before complaints are made.

Failure to pay a subcontractor according to contractual agreement between the prime and the subcontractor or within a reasonable time frame can also result in an Equal Opportunity Programs Department recommendation that the Contracting Officer take action based on the prime's LDBE/DBE participation commitments.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.32 of this Manual for additional guidance on special requirements and restrictions.

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## **5.7 SUSPENSION OF WORK**

Occasionally, situations occur during contract performance that cause the Airports Authority to order a suspension of work for a reasonable period of time for the convenience of the Airports Authority.

A suspension of work shall be issued when it is advisable pending a decision by the Airports Authority and a supplemental agreement providing for the suspension is not feasible. Issuance of a suspension of work must be approved by the Manager, Procurement and Contracts Department and it shall not be used in place of a termination notice after a decision to terminate has been made.

## **5.8 CONTRACTOR PERFORMANCE**

The Contracting Officer's Technical Representative (COTR), is delegated the responsibility for monitoring the contractor's progress and keeping the Contracting Officer informed of any problems. See Appendix H for duties and responsibilities of the COTR.

### **5.8.75.8.1 Documentation of Performance Critically Important**

The COTR must document incidents of poor performance and create a record that will support formal actions to enforce contract terms and conditions.

COTRs shall arrange meetings with the contractor, publish minutes, and build a record. The records must be detailed and reflect ongoing communications with the contractor, both verbal and written. Any recommendation that the COTR may make to the CO for issuance of a cure notice must be supported by documentation of the situation. A recommendation by the COTR to send a cure notice must be given serious consideration since it could be the precursor to a show cause letter followed by contract termination.

### **5.8.85.8.2 Contractor Performance Evaluation Reports**

Performance evaluations should be conducted for selected contracts during the period of performance in order to provide useful feedback to contractors on their performance and to provide them the opportunity to correct problems before contract completion. The COTR will be responsible for preparing the actual reports on the frequency established by the Contracting Officer (generally every six months). The format of the report form will be tailored as appropriate to accommodate the nature of the contract. This is an important part of the COTR's responsibility and it must be done in a timely and impartial manner. The COTR shall certify that to the best of his or her knowledge the facts and statements therein are accurate and that it represents the COTR's assessment of the contractor's performance during the rating period. The report will be endorsed by the COTR's supervisor and will then be sent to the contractor for comment and return to the Airports Authority. If the contractor's response contradicts the COTR's report, an effort should be made to reconcile the differences.

After the report is returned to the Airports Authority, it will be entered into an electronic data base from which it will be available for future use in the Airports Authority's contractor selection process or for other reasonable and lawful use by the Airports Authority.

### **5.8.95.8.3 Contractor Delinquencies**

When a delivery date is missed, the contractor is in default unless the delay is excusable under some term of the contract. Delays should be acted upon promptly. The Airports Authority may have the right to terminate and re-procure against the contractor's account. This right will be maintained between the time a delinquency occurs and the time a firm decision is made concerning what action is to be taken.

### **5.8.105.8.4 Cure Notice**

The purpose of a cure notice is to inform a contractor that its performance is deficient and the contractor has

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a specified period to cure the contract performance. Contracting Officers, generally based on a recommendation by the COTR, who believe that contractor is failing to perform according to contract terms and conditions, shall notify the Manager, Procurement and Contracts Department and the Office of General Counsel prior to sending a cure notice to the contractor and bonding company.

### ~~5.8.14~~5.8.5 **Show Cause Notice**

If the contractor fails to cure the deficiencies within the time allowed in the cure notice, the Contracting Officer, with approval of the Manager, Procurement and Contracts Department, and after coordination with the Office of General Counsel, will send a show cause notice to the contractor and the bonding company. The letter, which in some instances may not have been preceded by a cure notice, will inform the contractor that contract termination will result unless the contractor submits good and substantial evidence why the contract should not be terminated.

## **5.9 TERMINATION FOR DEFAULT (T FOR D)**

Under the termination provision, the Airports Authority may terminate a contract for default whenever the contractor fails to perform according to contract terms. Contracting Officers shall consider the following factors in determining whether to terminate a contract for default:

- (1) The provisions of the contract.
- (2) The specific failure of the contractor and reasons, if any, stated by the contractor for such failure.
- (3) The period of time that would be required for the Airports Authority or another contractor to complete the work as compared to the time required for completion by the delinquent contractor.
- (4) The effect of termination for default on the ability of the contractor to liquidate guaranteed loans, progress payments, or advance payments.

- (5) Any other pertinent facts and circumstances.

Contracting Officers who determine that the contractor's failure to perform arises from causes that are excusable under the terms of the contract, shall not terminate the contractor for default but may consider a termination for convenience. The decision to terminate for convenience should not be made without giving full consideration to the termination costs that may be incurred.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.33 of this Manual for additional guidance on special requirements and restrictions.

### ~~5.9.75~~5.9.1 **Termination for Default Notice**

Failure to respond to the show cause notice or to adequately prove the default was excusable will be grounds for issuing a notice of termination for default. Any proposed notice of termination for default accompanied by the contract file shall be forwarded through the Manager, Procurement and Contracts Department to the Office of General Counsel for review as to the legal sufficiency of the proposed default termination action. The notice shall-

- (1) Set forth the contract number, date, and the title and Contract Provision Number of the default provision;
- (2) Describe the act or omissions, and the extent of the resultant delay, constituting the default;
- (3) State that the contractor's right to proceed further with performance of the contract (or of a specified portion of the contract) is terminated;
- (4) State that the Airports Authority may cause the contract to be completed and that the contractor will be held liable for any increased cost;
- (5) State that the Airports Authority reserves all rights and remedies provided by law or under the contract, in addition to charging increased costs; and

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- (6) State that the notice constitutes a decision that the contractor is in default as specified, and that the Contracting Officer has determined that the delay is not excusable.

Distribution of the termination notice shall be made to both parties and a copy shall also be furnished to the contractor's surety. If determined to be in the Airports Authority's best interest, the surety should be requested to advise if it desires to enter into an arrangement for completion of the work. In addition, Accounts Payable shall be notified to withhold further payments under the terminated contract pending further advice. Promptly after issuance of the termination notice, Procurement and Contracts Department in coordination with the COTR shall determine the manner in which the work is to be completed.

#### **5.9.85.9.2 Re-procurement of Goods or Services**

Where the goods or services are still required after termination, re-procurement of the goods or services that are the same as, or similar to, those called for in the contract shall be made against the contractor's account as soon as practicable after termination. Such re-procurement shall be at as reasonable a price as practicable considering the quality required and the time within which the goods or services are required. The contract for the re-procurement may be made for a quantity in excess of the undelivered quantity terminated for default, when such excess quantity is needed, but excess cost may be charged against the defaulting contractor for no more than the undelivered quantity terminated for default (including variations in quantity).

If the re-procurement is effected at a price in excess of the price of the goods terminated, the Contracting Officer shall make a written demand on the contractor for the total amount of such excess giving consideration to increases or decreases in other ascertainable costs such as transportation, discounts, etc., and shall take such other action as is required for collecting claims in favor of the Airports Authority.

#### **5.9.95.9.3 Other Damages**

If a contract is terminated for default or if a course of action in lieu of termination for default is followed, the Contracting Officer shall take appropriate action for ascertaining and collecting any liquidated damages that the Airports Authority may be entitled under the contract, pursuant to the contract provisions for liquidated damages. Such damages are in addition to any excess cost of re-procurement. If the Airports Authority has suffered any other ascertainable damages as a result of the contractor's default, the Contracting Officer shall take appropriate action to assert the Airports Authority's claim for such damage.

#### **5.9.105.9.4 Memorandum of the Termination Action**

In all cases where a contract is terminated for default, the Contracting Officer shall prepare a memorandum for the contract file explaining the reasons for the action taken.

#### **5.10 TERMINATION FOR CONVENIENCE (T FOR C)**

Prior to issuing a notice of termination for convenience, the Contracting Officer shall ensure that the contract file contains adequate documentation justifying the termination including coordination with the Manager of Procurement and Contracts Department, and the Office of General Counsel.

The T for C notice shall clearly state the effective date of the termination, whether or not all work is to be stopped, and the specific work to be terminated if the termination is partial. The notice may also include special instructions about the continuation of certain work, disposition of inventory, or other matters. For example, production of a main equipment item may be completely terminated; however, the Airports Authority may want to order spare parts and other supply support items for delivered equipment.



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### ~~5.10.75.10.1~~ **T for C Contracting Officer's Responsibilities**

Contracting Officers shall confer with the contractor and develop a specific plan for effecting the termination settlement. The discussion should cover all topics related to the principles, policies, and procedures governing the settlement including but not limited to the extent of the termination; the status of plans, drawings, and other data; the status of the continuing work; the contractor's responsibility for termination of subcontracts; the transfer of title to the Airports Authority of materials, data, drawings, and specifications; and the schedule for the contractor's submission of settlement cost proposals, inventory schedules, and accounting data. A detailed account of the discussion shall be made a part of the contract file.

### ~~5.10.85.10.2~~ **T for C Contractor's Responsibilities**

The notice of termination and the termination provision define the contractor's obligations. Upon receiving the notice, the contractor must stop work under the contract, as directed. Any work beyond that authorized by the notice of termination is at the contractor's own risk.

The contractor's obligations also require termination of all unperformed or partially performed subcontracts, purchase orders, and blanket purchase orders relating to the terminated portion of the prime contract, and to settle all outstanding liabilities and claims arising from such termination.

If directed by the Contracting Officer, the contractor must assign to the Airports Authority all rights to material, data, plans, specifications, etc., associated with the terminated portion of the contract. The contractor and any subcontractors must protect and preserve any property related to the contract in which the Airports Authority may acquire a right or interest. The contractor must also deliver (to the extent directed to do so) any completed and partially completed materials produced or acquired in connection with the terminated work. Contractors must deliver any completed or partially completed plans or drawings that would have been required had the contract been

completed. Transfer of title accompanies such delivery. As directed by the Contracting Officer, contractors must use their best efforts to sell any undelivered property. They must also complete that portion of the contract not terminated.

Finally, contractors must promptly submit their claim for fair compensation for the terminated work.

There are several practical business problems to be considered in connection with complex terminations. For one, there is the period of time the contractor needs to stop work and terminate contracts. This will vary with the nature and complexity of the terminated work and the volume of other work at the time of termination. Contractors probably will not want to completely stop work on contracts and orders that relate to both terminated and continued work. As a result, contractors may have to screen subcontracts, purchase orders, blanket purchase orders, bills of material, and continuing work requirements before they can issue termination notices. Therefore, it may be impossible to discontinue certain costs and expenses at once. Nevertheless, it is usually true that continuation of the work beyond the time specified in the notice of termination is done at contractors' own risk and on their own account. In settling terminations, contractors' actions must be reviewed to determine whether they acted prudently and reasonably under all the circumstances.

## **5.11 TERMINATION SETTLEMENT**

After issuing a notice of termination, either for default or convenience, the Airports Authority has an obligation to make a fair and prompt settlement with the contractor. Settlements of terminated contracts take the form of negotiated agreements between the parties or unilateral determinations by the Contracting Officer.

### ~~5.11.75.11.1~~ **Principles of Compensation**

#### ~~5.11.75.11.1.1~~ Profit Factors

In a termination settlement, a contractor will be allowed profit only on mobilization costs and work done for the terminated part of the contract.



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Anticipatory profits (the expected profit on that terminated part of the contract for which no preparations were made and no work done) are not allowed. Nor may profits be based on post termination and settlement expenses. These include expenses incurred in protecting termination inventory and in the settlement of subcontracts.

Usually a settlement can be reached by comparing the work done on the terminated part of the contract to the amount of work contemplated by the entire contract. The comparison should be expressed as a percentage; the percentage should then be applied to the amount of profit contemplated when the contract was written. Costs incurred are not by themselves a suitable guide as they often do not accurately reflect the amount or difficulty of the work already performed by the contractor.

#### ~~5.11.7.25.11.1.2~~ Adjustment for Loss

No profit should be allowed if it appears that the contractor would have suffered a loss not resulting from the Airports Authority's action (e.g., delays, informal changes, etc.) on the entire contract. Instead, the settlement figure should be adjusted to reflect the indicated rate of loss.

### ~~5.11.85.11.2~~ Termination Settlement Reviews

All proposed termination settlement agreements shall be reviewed by the Office of General Counsel prior to submission to the contractor for signature.

## **5.12 CONTRACT CLOSEOUT**

Closing out a contract ensures that the contractor has complied with all the contract requirements and that, in turn, the Airports Authority has fulfilled its obligations. Contract closeout is the culmination of a series of monitoring actions throughout the life of the contract. Contracting Officers shall confirm with the Risk Management Department that there are no outstanding insurance claims prior to closing the contract. A copy of the Contractor's Release form shall be furnished to Accounts Payable for their records.

### ~~5.12.75.12.1~~ Closeout Modification

Contracting Officers shall issue a closeout modification when the final price is different from the current contract amount, when necessary to establish final quantities for unit priced items, and for other appropriate reasons.

### ~~5.12.85.12.2~~ Time Goal for Closeout

Contracts should be closed out as rapidly as practicable. The Contracting Officer has a responsibility to the contractor to see that retainage is released and payment of any monies due is made promptly.

### ~~5.12.95.12.3~~ Exceptions to Full Release of Claims

A contract may be completed except for a minor point for which pending litigation, arbitration, or other reason requires an extended period of time to resolve. In such cases, regular closeout procedures would hold the entire contract open for an extended period of time. However, with Legal Counsel concurrence, the Contracting Officer may prepare and have the contractor sign a release of claims except for the point in question, reserving both parties' rights in the future settlement of the point in question. Upon receipt of such release, the Contracting Officer may authorize final payment in total, or may reserve enough funds to cover the point in question, subject to the approval of the Manager, Procurement and Contracts Department.

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## 6 CONCESSIONS CONTRACTS

Chapter 6 describes procedures used to acquire and administer ~~airport~~ concessions contracts. This chapter is intended to be self-contained, except in those instances where specific reference is made to information outside of Chapter 6. Included herein is the solicitation, evaluation, and award process for concession contracts. It also describes the notification and debriefing of unsuccessful offerors. In addition, it covers various aspects of the administration of concession contracts.

~~Airport concessions are businesses on airport that sell goods and services to airport patrons, airlines and other tenants. To engage in business at the airports~~ Concessions are businesses on airport that sell goods and services on Reagan National Airport, Dulles International Airport, or the Dulles Toll Road to the traveling public. No concession may be operated on the airports or the Dulles Toll Road without having been granted the right to do so by the Airports Authority. The definition of concessions does not include air carriers, or businesses that provide goods or services to air carriers or airport tenants, such as in-flight caterers, fuel providers, and other similar businesses.<sup>1</sup> Concessions covered by this chapter do include advertising aimed at travelers. To engage in a concession, concessionaires must have permission from the Airports Authority in the form of a contract or permit. The Airports Authority may contract directly with individual concessionaires or it may contract with one or more “Prime Concessionaires” that will have the responsibility for selecting and contracting with individual concessionaires to operate at the airports. The Airports Authority will select individual concessionaires and Prime Concessionaires using the procedures set forth in this Chapter. The procedures to be followed by the Prime Concessionaire in selecting and contracting with their concessionaires will be established by the Prime Concessionaire with the Airports Authority’s approval and will vary from the procedures established in this Chapter. In addition, some concession contracts, such as those for operation of the public parking concession, are structured as management contracts in which a contractor manages the concession for the Airports Authority, is

<sup>1</sup> Such activities are still subject to approval and terms and conditions established by the Airports Authority pursuant to Section 6.1 of the Metropolitan Washington Airports Authority Regulations, as amended from time to time.

reimbursed by the Airports Authority for approved expenses, and is paid a management fee by the Airports Authority.

In exchange for the privilege of doing business on ~~airport~~ Airports Authority property, concession contractors pay fees or other forms of compensation to the Airports Authority. The nature of the fees varies depending upon the type of concession. In some cases, the contractor pays a set fee each month. In other cases, the contractor pays the greater of a minimum annual guarantee or a percentage of its gross receipts. ~~Some concession contracts, such as those for operation of the public parking concession, are structured as management contracts in which the contractor collects revenue for the Airports Authority, is reimbursed by the Airports Authority for approved expenses, and is paid a management fee by the Airports Authority.~~

~~Most airport concessions~~ Concessions are competitively solicited using Request for Proposal (RFP) or Invitation for Bid (IFB) procedures as set forth below. The RFP process considers not only the amount of revenue that offerors propose to pay to the Airports Authority but also non-financial aspects of the offerors’ proposals, such as operational and management aspects of the proposed operation, customer service commitments, etc. ~~Some airport concessions, such as the car rental concessions are solicited using the Invitation for Bids (IFB) process as outlined in Paragraph 6.2.2. These~~ Under the IFB process, contracts are awarded based upon the revenue to be paid to the Airports Authority.

In many Airports Authority concession agreements, the concessionaire is leased or assigned space ~~on the airport~~ for its exclusive use in the conduct of its business. In all instances, unless otherwise specified in the contract, space arrangements in Airports Authority

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concession contracts are to be treated as leases regardless of whether a separate rental is specified for the space.

**NOTE:** For solicitations involving assets funded by the Federal Transit Administration, see Paragraph 10.7.34 of this Manual for additional guidance on special requirements and restrictions for Revenue Contracts.

## **6.1 CONTRACTING AUTHORITY**

### **6.1.76.1.1 Contracting Officers**

Only persons with formally delegated written authority to commit the Airports Authority can serve as Contracting Officers with the power to enter into contracts and other contractual instruments such as modifications, task orders, and leases. The Concession and Property Development Manager has been appointed a Contracting Officer and is delegated the authority to enter into, administer, and amend solicitations, modify contracts, and close-out concession and other revenue producing contracts regardless of dollar amount, with the exception of the ground transportation, rental car, Fixed Base Operator(s), and parking concession contracts. The ~~Manager of Airport Administration~~Manager for each airport has been appointed Contracting Officer for the ground transportation, rental car, Fixed Base Operator(s), and parking concession contracts.

Documentation of all contracting authority re-delegations shall be maintained by the staff members making such re-delegations, and shall include the name of the person receiving the re-delegation, the date of the re-delegation, the duration of the re-delegation, and any limits of the re-delegation. A copy of each re-delegation shall be sent to the Manager, Procurement and Contracts Department, and that department shall keep a centralized record of all delegations of contracting authority.

All persons delegated contracting authority and all Contracting Officers' Technical Representatives (COTR) shall receive initial and recurring formal procurement training.

### **~~6.1.86.1.2~~ Vice President Approvals**

In this Chapter 6, certain contracting officer actions must be approved by the Vice President for Business Administration or the Vice President and Airport Manager for each airport, as appropriate.

### **~~6.1.96.1.3~~ Contracting Process Oversight**

The Procurement and Contracts Department coordinator is responsible for oversight of the concession contract solicitation process to ensure that it conforms to the Airports Authority's contracting policies and procedures. The coordinator shall review the advertisement and solicitation document to ensure consistency with contracting standards, shall be the point-of-contact for questions from prospective offerors, and shall oversee the receipt, review, and evaluation of offers. The coordinator will be involved in debriefings and protests.

### **~~6.1.106.1.4~~ Board Approval**

In its delegations of authority, the Board has reserved approval authority for concession contracts or leases that will result in annual revenue to the Airports Authority of \$3,000,000 or more, or as further reserved by the Board. Board of Directors approval is also required to award concession contracts without full and open competition.

The Board has authorized the President and Chief Executive Officer (CEO) to grant an extension of up to twelve months of any concession contract necessary to maintain services and revenue during periods when timely award of a new contract cannot be made before the expiration of the current one, provided that the Business Administration Committee is notified of the need to grant such extensions at the earliest possible occasion before they are granted. Any time this authorization to extend a contract is to be used, a memorandum from the Vice President and Airport Manager or the Vice President for Business Administration shall be sent to the President and CEO with appropriate justification for the extension. If

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approved, this memorandum shall be placed in the contract file.

### **6.1.11 Competition Guidelines**

#### **6.1.5 Full and Open Competition**

The Airports Authority's policy Authority is committed to ~~achieve~~, "obtain to the maximum extent practicable, full and open competition. ~~The categorical exceptions stated in Paragraph 1.2 do not apply to concession contracts~~" for its contracting opportunities. .

Concession contracts to be awarded directly by the Airports Authority without full and open competition must be approved by the Board of Directors prior to award.

### **6.2 SOLICITATION PROCESS**

The Airports Authority's commitment to obtaining full and open competition includes publication and adherence to the detailed contracting procedures in this Manual, which are designed to enable those interested in the Airports Authority's contracting opportunities to become familiar with the procedures that the Airports Authority follows. Special conditions may make it necessary to make material changes to the procedures in this Manual on a case-by-case basis and as authorized by the Board of Directors. In the event such changes are made, they will be identified as such in the solicitation, which should be read with care prior to submission of a proposal, quotation or bid. Non-material changes to the Manual's procedures, provided they are not inconsistent with the achievement of full and open competition, may be made with approval of the Manager, Procurement and Contracts Department.

#### **6.1.6 Full and Open Competition With Exclusions - Local Disadvantaged Business Enterprises – 100% Set Aside**

While not typical for concession contracts, the Airports Authority may set aside concession contracts, when appropriate, for competition only among LDBE firms. While competition for such contracts is limited to

LDBE firms, all LDBE firms able to perform the scope of work may compete for them.

Before the Airports Authority determines that it is appropriate to set aside a concession for 100% LDBE participation, there shall be a minimum of 3 to 5 LDBE firms qualified to compete for a concession opportunity. The justification for limiting competition to LDBE firms must explain the analysis used to support the limitation.

#### **6.1.7 Other than Full and Open Competition**

All concession contracts awarded through other than full and open competition must be supported by written determinations and findings justification documents and be approved by the Board of Directors. The justification to be submitted by the Contracting Officer to the Manager, Procurement and Contracts Department must include, at a minimum: a description of the concession; a description (including estimated value) of the goods, supplies or services needed to fulfill the Airports Authority's requirements; a demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires the use of other than full and open competition procedures; a description of the efforts used to ensure that bids or proposals were solicited from as many sources as possible or practicable; a determination by the Contracting Officer that the amount to be paid to the Airports Authority, or, in the case of a management contract, the cost to be paid by the Airports Authority, will be fair and reasonable; any other facts supporting the use of other than full and open competition; a listing of sources, if any, that expressed interest in the acquisition; a statement of the actions, if any, that the Airports Authority can take to avoid other than full and open competition in subsequent acquisitions; and a certification by the Contracting Officer that the justification is accurate and complete to the best of their knowledge and belief.

Justifications must be made publicly available by posting on the Airport Authority website within 14 days of the contract award and must remain available for a minimum of 30 days.



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### **6.1.8 Standards of Conduct**

The Airports Authority expects all employees to act in the best interests of the Airports Authority at all times and to not knowingly engage in conduct that is illegal, dishonest, or brings discredit upon the Airports Authority, or participate in any Airports Authority matter as to which the employee has a conflict of interests. In particular, employees who obligate the Airports Authority to spend money, approve payments, and make decisions affecting disbursements have a special duty to make their recommendations and decisions without prejudice, seeking to obtain the maximum value for the Airports Authority.

### **6.1.9 Codes of Ethics**

The Airports Authority's *Code of Ethics for Employees* and *Code of Ethical Responsibilities for Members of the Board of Directors*, which are available on the Airports Authority's website, [www.mwaa.com](http://www.mwaa.com), are incorporated into this Manual as if they were expressly set forth. In general, these Codes prohibit the solicitation of Gifts and restrict the acceptance of Gifts;<sup>2</sup> prohibit employees and members of the Board from using their position for the financial gain of acquaintances or relatives or their own gain; define Substantial Financial Interests and restrict employees and members of the Board from participating in any transaction or matter as to which they have a conflict of interests; and define certain restrictions (including restrictions related to Airports Authority contracting activities) that are applicable to employees following the termination of employment with the Airports Authority and to Board members following the expiration of their term.

Employees and members of the Board who violate these Codes are subject to sanctions as set forth in the applicable Code.

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<sup>2</sup> Capitalized terms in this paragraph are defined in the Airports Authority's *Code of Ethics for Employees* and/or *Code of Ethical Responsibilities for Members of the Board of Directors*.

### **6.1.10 Contractor Certificates and Disclosures; Employment of Former Authority Employees**

All offerors for Airports Authority contracts shall be required to submit a certificate with the offer that states that, to the best of their knowledge and belief, and with the exception of any information listed in the certificate, they have no information concerning any conduct by an Airports Authority employee or a member of the Board that is or may be in violation of either of the Codes of Ethics. The Airports Authority will evaluate the information provided in an offeror certificate and, based on the information, may cancel the solicitation or take any other action it determines to be in the best interests of the Airports Authority, such as the disqualification of the offeror. If it is subsequently determined that an offeror to which a contract has been awarded submitted a certificate with false or erroneous information or falsely or negligently certified that it had no information concerning actual or possible violations of the Codes, its contract may be cancelled or rescinded and it may be required to repay the Airports Authority all amounts paid under the contract.

Contractors are advised that the Code of Ethics for Employees imposes certain restrictions on the activities in which Contracting Officers and COTRs may engage following their employment with the Airports Authority, and contractors should consult the Code before engaging such employees after their departure from the Airports Authority.

### **6.1.11 PROHIBITED CONDUCT**

Airports Authority business shall be conducted in a manner above reproach and with complete impartiality and preferential treatment for none. The following conduct is strictly prohibited:

- 1) The offer or the provision of anything of value, by an offeror or contractor, to an Airports Authority employee or a member of the Board with the intent to influence an action or decision to be made by the employee or

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member, or with the intent to compensate or recognize the employee or member for an action or decision that the employee or member has made. (Gifts to employees and Board members are substantially restricted by the Codes of Ethics; persons seeking to contract with, or under contract with, the Airports Authority should consult the Codes for details.)

- 2) The disclosure by an Airports Authority employee, Board member or offeror, other than to persons authorized by this Manual to receive such information, of bid or proposal information or source selection information prior to contract award, except in accordance with this Manual and the Airports Authority's Freedom of Information Policy.



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3) Use of procurement information for personal gain, including negotiation for future employment outside of the Airports Authority.

4) Acceptance of contractor kickbacks, subcontractor kickbacks, bribes, gratuities and other similar monetary payments.

5) Participation in a particular matter by those acquisition personnel having a conflict of interest regarding the matter.

All acquisition and contracting personnel having decision making or contract administration duties shall receive, as part of their annual ethics training, supplemental procurement integrity training.

Any violations of this chapter may be subject to both supervisory discipline and referral to the Airports Authority Ethics Officer for investigation.

## **6.2 SOLICITATION PROCESS**

This section describes the types of solicitations utilized by the Airports Authority for concessions and the methods used to evaluate contractors' proposals as well as provides guidance on how concession contract solicitations are prepared, advertised, and distributed. The solicitation phase includes the activities that take place between the time the Airports Authority determines that it will issue a solicitation for a concession and the time a contract is awarded. This phase may include soliciting proposals, qualifications, quotations, or financial offers from responsible sources; evaluating the responses to the solicitation; securing the necessary approvals and execution of the contract with the selected offeror. Most Airports Authority concession solicitations are issued in the form of a Request for Proposals (RFP); however, Invitations for Bids (IFB) may be issued for some concessions, such as the airport rental car concessions. This section discusses the difference between RFPs and IFBs.

### **6.2.76.2.1 Solicitation Types - Competitive Proposals (RFP)**

~~6.2.7.16.2.1.1~~ 6.2.1.1 When Request for Proposal (RFP) procedures are used

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 prior to contract award;
- (2) There may be criteria other than, or in addition to, financial offer that are important when choosing an offeror for award;
- (3) There are potentially significant qualitative differences among contractors and their proposals;
- (4) There are two or more qualified sources;
- (5) Lead times are adequate.

~~6.2.7.26.2.1.2~~ 6.2.1.2 RFP Content

In general, an RFP consists of the following: 1) a description of the concession opportunity and requirements, an overview of the contract terms and conditions associated with the opportunity, proposal requirements, premises drawings, exhibits that provide further information concerning the opportunity, and the evaluation criteria; 2) the draft of the contract the Airports Authority expects to award to the successful offeror, including the Airports Authority's Standard Concession Contract Provisions if applicable; 3) a financial offer schedule; 4) representations and certifications form; and 5) any additional forms that need to be completed by the offeror and returned with its proposal.

### **6.2.86.2.2 Solicitation Types - Advertised Sealed Bids (IFB)**

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.

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- (5) Lead times are adequate.
- (6) Clear, detailed specifications or requirements are available.

#### 6.2.8.16.2.2.1 Basis for Solicitation of Bids

Bids for concessions are solicited on the basis of an Invitation for Bids document that contains an accurate description of the concession that allows bidders to compete on a common basis without restricting competition. Specifications will not be adopted so as to favor one contractor over another.

#### 6.2.8.26.2.2.2 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 the description of the Airports Authority's requirements for the concession operations 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. In general, the IFB will include the same items described in Paragraph 6.2.1.2 for RFP content.

#### 6.2.8.36.2.2.3 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; and (2) the financial offer. 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.

#### 6.2.8.46.2.2.4 IFB Determination of Responsiveness

After the bid opening, the Contracting Officer is required to evaluate the apparent successful 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 financial offer, quantity, quality or delivery of the concession services 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 financial offer, quality, quantity or delivery of the concession services 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 its 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 contract requirements 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, 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 guarantees are not submitted with the contractor's bid, when they are received from the apparent successful 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.

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### **6.2.96.2.3 Types of Solicitations - Sole-Source Negotiation**

This type of concession procurement occurs when there is only one ~~known or acceptable source for the concession. The RFP process described in Paragraph 6.2.1 is used for sole source procurements. The classic example of a sole source concession would be a concession for unique service or goods available from only one source responsible or one practicable source for the concession and there is no other source that will satisfy the Airports Authority's requirements.~~

~~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 have responded is not a sole source.~~

The following are examples of situations in which the Airports Authority may procure goods, services or construction directly from a sole source:

(a) Unique or Innovative Concepts. The source of the supplies or services demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel or changed concept, approach or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and the concept, approach or method is available to the Airports Authority only from one source and has not in the past been available to the Airports Authority from another source.

(b) Patents or Restricted Data Rights. The existence of patents or restrictions arising from intellectual property or other proprietary rights preclude competition and make supplies or services available only from a single source.

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Sole source concession contracts, because they involve other than full and open competition, must be approved by the Board of Directors prior to award. If a sole source is contemplated, a sole source justification must be submitted by the Contracting Officer to the Manager, Procurement and Contracts Department. The

~~justification must include, as applicable, a description of (a) the concession opportunity; (b) efforts made to provide for competition (e.g. advertising); (c) the market research conducted; and (d) if it is a recurring need, actions to be taken to produce a future competitive package. information required by Section 6.1.7 of this Manual.~~ Advertising and market research are effective methods of locating new sources and creating a competitive environment. Contracting Officers shall advertise sole source requirements and maximize their market research efforts to find alternative sources.

Sole source justifications must be signed and approved by the Procurement and Contracts Department Manager with a copy maintained in the contract file. In entering into a sole source contract for a concession opportunity, 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 concession opportunity and determine what is a fair and reasonable financial offer. This can be done by (1) comparing financial offers for previous concession contracts for the same or similar concession, both with the Airports Authority and with other airports; or (2) by performing an analysis of financial offer data submitted by the offeror.

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.

### **6.2.106.2.4 Types of Solicitations – 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

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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.

## **6.2.11.16.2.5 Preparation of Solicitations and Draft Contracts**

### **6.2.11.16.2.5.1 Contract Term**

The length of the contract term for concession contracts will be appropriate for the type of concession. The concession contract may include a base contract term and one or more option periods to be exercised at the Airports Authority's sole discretion.

### **6.2.11.26.2.5.2 Performance Guarantees**

Each concession contract will, unless otherwise approved by the Contracting Officer, require the contractor to guarantee its performance of the contract. This performance guarantee may be provided in the form of a bond, letter of credit, cash, or other form permitted by the contract. Unless otherwise approved by the Vice President and Airport Manager or the Vice President for Business Administration, the amount of the performance guarantee will be fifty percent (50%) of the minimum annual guarantee or previous year's total payment to the Airports Authority, whichever is greater.

### **6.2.11.36.2.5.3 Solicitation Response Time**

The response time is the period of time between the date of issuance of a solicitation and the date set for receipt of proposals. The Airports Authority will consider factors such as the following in determining the response time to be provided:

- (1) Urgency of the Airports Authority's need for the services;
- (2) Complexity of the solicitation;
- (3) Estimated cost of preparing the proposals or offer;
- (4) Extent of subcontracting anticipated;

- (5) Geographic distribution of potential offerors;
- (6) Normal time for mail transmission of both solicitations and submittals; and
- (7) Other related factors, such as avoiding having the due date fall on a Monday or the day following a holiday.

### **6.2.11.46.2.5.4 Pre-Proposal Conference / Site Visit**

When appropriate and based on the type of concession solicitation, the Airports Authority may establish a date and time for a pre-proposal conference and site visit. This normally will occur at the airport(s) where the concession will be located, soon after the solicitation is issued. This provides an opportunity for the Airports Authority to emphasize and clarify critical aspects of the solicitation, eliminate ambiguities or misunderstandings, answer prospective offerors' questions, allow the prospective offerors to become familiar with the concession site, and permit prospective offerors to ask questions about the solicitation terms and conditions or suggest how it might be changed. When deemed necessary and appropriate, the Airports Authority may tape record pre-proposal proceedings.

#### **(1) Additional Site Visits**

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

#### **(2) Mandatory ~~Preproposal~~Pre-proposal Conferences and Site Visits**

Mandatory visits (i.e., where attendance at a site visit or pre-proposal conference is mandatory in order to submit a proposal) shall be limited to special situations approved by the Manager, Procurement and Contracts Department. When mandatory attendance is stipulated, only proposals from those attending firms shall be considered for award unless waived by the Vice



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President and Airport Manager or the Vice President for Business Administration.

#### ~~6.2.11.56.2.5.5~~ Evaluation Criteria –General

Each concession RFP 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 use of sub-criteria to further breakdown 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.

Financial offer 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 financial 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.

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 consistent with the published criteria.

Only the evaluation criteria listed in the RFP and the pre-assigned weights shall be used by the Evaluation Committee (EC).

#### ~~6.2.11.66.2.5.6~~ Evaluation Criteria - Financial Offer Only

In most cases, concession proposals will be evaluated using both technical criteria and financial offer criteria. When the concessionaire selection is to be based solely upon financial offer, the Airports Authority will issue an IFB.

#### ~~6.2.11.76.2.5.7~~ Evaluation Criteria - Both Financial Offer and Technical Criteria

If technical criteria and financial offer criteria are to be used to determine which is the best proposal, the 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 criteria that may be appropriate include: i) experience and qualifications of the offeror; ii) experience and qualifications of the offeror's manager and key personnel; iii) business plan and understanding of the business opportunity and the Airports Authority's needs; and iv) pro forma and financial statements.

#### ~~6.2.11.86.2.5.8~~ DBE Participation

It is the Airports Authority's goal to ensure that DBE firms have a significant and continuing opportunity to compete for Airports Authority business. Contracting Officers shall focus on whether the solicitation is structured to facilitate achievement of the DBE goals that were arrived at through the process described in Paragraph 4.2.

#### ~~6.2.11.96.2.5.9~~ Insurance

The Contractor shall ensure that the concession contract includes the specific coverage required by the

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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 the Risk Management Department. The Metropolitan Washington Airports Authority shall be named as an additional insured on every policy except Workers' Compensation and Professional Liability, unless otherwise established by the Risk Management Department. The policy must provide 30 days' advance notice to the Airports Authority of cancellation of the coverage. Contractors are required to submit certificates of insurance to the Contracting Officer, who shall forward them to the Risk Management Department for review and approval.

#### ~~6.2.11.106.2.5.10~~ Options

Generally, the Airports Authority requires that financial offers be provided by the offerors for all option periods and that the options be included in the total evaluated financial offer for each offeror. Alternatively, for concession contracts in which the concession fee is established as the greater of a minimum annual guarantee or the percentage of gross receipts established by the contract, the minimum annual guarantee for the option years can be established by formula (e.g., the minimum annual guarantee will be 80% of the prior year's concession fee).

Nothing herein implies that the Airports Authority is obligated to exercise any or all of the options during the term of the contract.

#### ~~6.2.126.2.6~~ Advertisement of Concession Opportunities

Except in unusual circumstances, airport concession opportunities will be publicized so as to reasonably ensure that interested qualified persons can respond to the opportunity.

Concession opportunities will be posted on the Airports Authority's website ([www.mwaa.com](http://www.mwaa.com)). The Airports Authority also provides periodic e-mail notification of business opportunities to interested firms that have registered on-line ([www.mwaa.com](http://www.mwaa.com))

for "PROJECT eLERT" to be sent directly to their e-mail address. In addition, a notice of the concession opportunity may be placed in the Washington Post, and in trade publications. The opportunity may also be placed on the Airports Authority's Solicitation Notice Board at 1 Aviation Circle, Ronald Reagan Washington National Airport. The Contracting Officer will also maintain a mailing list of firms interested in particular concession opportunities so that these firms can be contacted directly when the solicitation becomes available. Except in unusual situations, this mailing list shall be used only as a supplement to public advertisement of the solicitation.

The Airports Authority maintains an "open door" policy with the business community

#### ~~6.2.136.2.7~~ Solicitation Distribution

Solicitations will be available for downloading directly from the Airports Authority's website. A hard copy of the solicitation will be made available if requested from the Procurement and Contracts Department (see Appendix B for address).

Solicitation amendments will be posted on the Airports Authority's Website and will be distributed to firms that are registered holders of the initial solicitation.

#### ~~6.2.146.2.8~~ Prospective Offeror Lists

A list of prospective offerors 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 list includes firms to whom solicitations have been furnished in hard copy by the Airports Authority in addition to firms who have registered on-line as having downloaded the solicitation. It is important for firms interested in a particular solicitation to be included on the 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.



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### **6.2.156.2.9 Amendments**

Between the time a solicitation is issued and the offers are due, the solicitation terms may be changed. Such changes can affect the solicitation requirements, draft contract or other aspects of the solicitation. Changes may correct or clarify ambiguities, errors, or omissions from the solicitation. Amendments are distributed to all firms on the list of prospective offerors known to have received the initial solicitation documents. 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. 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 a proposal being found to be in non-conformance, (see paragraph 6.2.20). Because distribution of amendments will be made to all firms on the Prospective Offeror's List, potential offerors should refer to Paragraph 6.2.8 for more information.

### **6.2.16 Public Release of Information**

#### **6.2.10**

The Airports Authority's Freedom of Information Policy, adopted by the Airports Authority's Board of Directors, governs the release of Airports Authority records. Under the Freedom of Information Policy, Airports Authority records containing confidential business information of the Airports Authority are exempt from release. Records containing confidential business information of parties other than the Airports Authority are also exempt from release, which may include records created by or relating to offerors and contractors. In addition, records that are considered privileged ~~predecisional~~ pre-decisional documents are exempt from release. These exemptions, when applied to records prepared during, in conjunction with, or as a result of, an Airports Authority procurement, are intended to protect the integrity of the procurement process and to preserve the confidentiality of certain

information submitted during the process by offerors and contractors.

The following provisions govern the release of records (including releases pursuant to requests under the Freedom of Information Policy) that have been prepared during, in conjunction with, or as a result of an Airports Authority procurement.

- (1) Proposals or bids submitted by offerors may be withheld from release at any time, except that, after contract award, portions of the winning proposal or bid that have been incorporated into the contract and that do not contain confidential business information of the contractor, will be released.
- (2) Offers and price schedules submitted by offerors, and abstracts of offers created by the Authority, may be withheld from release at any time, except that, following the date of contract award, or the date a written notice of intent to award is sent to unsuccessful offerors, whichever occurs first, abstracts with the names of unsuccessful offerors redacted and with total price offers (other than unit prices) shown on such documents will be released. If the solicitation sought prices for multiple contract years, the total price offer for each contract year will be released after the date of contract award, or the date a written a notice of intent to award is sent to unsuccessful offerors, whichever occurs first. With respect to solicitations conducted under Invitation for Bid procedures, bids, price schedules, and abstracts of offers containing information read aloud at bid opening pursuant to Paragraph 2.8.3 will be released after bid opening.
- (3) The names, notes, and score sheets of individual Evaluation Committee members may be withheld from release.
- (4) Compilations of the scoring and scoring rationales of an Evaluation Committee may be withheld from release, except that a committee's final scoring summary, including its scores for each offeror under each evaluation criterion and its total score for each offeror, as well as the

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committee's rationales for such scoring will be released after the date of contract award, or the date a written notice of intent to award is sent to unsuccessful offerors, whichever occurs first, but with the names of Evaluation Committee members and unsuccessful offerors redacted.

- (5) Recommendation or information papers provided to the Board or Board Committees may be withheld from release, except that the following information in such papers will be released after the date of contract award, or the date a written a notice of intent to award is sent to unsuccessful offerors, whichever occurs first: number of proposals or bids, identity of the winning offeror(s); description of the evaluation process; number of offerors on the short list (if any); final evaluation scores for each offeror (both by criterion and overall total), except that the identities of the unsuccessful offerors may be withheld from release; rationales for the final evaluation scores, except to the extent they contain proposal information that an offeror has claimed to be confidential or proprietary business information; and the total dollar amount of each offeror's financial offer.
- (6) Offerors receiving notice of ~~contract~~intent to award to another offeror will be provided the same information that would be released to members of the public under this Paragraph 6.2.10 and the Freedom of Information Policy, except that the evaluation scores assigned to the proposal of the offeror that is seeking the information will not be redacted.
- (7) During the term of a contract, amounts the Airports Authority has paid pursuant to the contract will be released.
- (8) Requests for information not addressed in paragraphs (1) through (7)- that is contained in records prepared during, in conjunction with, or as a result of an Airports Authority procurement will be considered in accordance with the Freedom of Information Policy.

### **6.2.176.2.11 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 exists:

- (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 proposals;
- (2) It was sent by overnight express delivery service in time to have arrived prior to the date and time specified for receipt of proposals;
- (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 which justify 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 proposal 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.

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If the postmarks are not legible, the proposal 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.

#### **6.2-186.2.12 Electronically Transmitted Proposals**

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.

#### **6.2-196.2.13 Alternate or Qualified Offers**

An alternate offer is submitted in knowing variance from the solicitation requirements and must be clearly distinguished as an alternate by the offeror. Alternate offers can result in substantial benefits to the Airports Authority, not only in monetary terms, but in operational efficiencies. Such an offer which deviates from the solicitation's requirements 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 and Office of General

Counsel, it may be possible to accept an alternate, or to reject all offers and re-solicit based upon revised solicitation requirements. 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.

#### **6.2-206.2.14 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 they are 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.

#### **6.2-216.2.15 Revisions / Withdrawals of Proposals**

Offerors may revise their proposals in writing provided the original proposal was timely and further provided that the revision is received by 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 will be accepted only in accordance with rules established for the acceptance of late offers; however, a late revision of an otherwise successful proposal may be accepted if it makes the terms of the proposal more favorable to the Airports Authority. Proposals may be withdrawn at any time prior to award; provided, however, if an offeror withdraws its proposal after being identified as the apparent successful offeror, it will forfeit its proposal guarantee.

#### **6.2-226.2.16 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 requirements; (2) requirements need to be significantly revised; (3)

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the concession opportunity being procured is no longer needed or desired; (4) offers received indicate that the needs of the Airports Authority can be satisfied by other means; (5) all otherwise acceptable offers received are at unreasonably low financial offers; or (6) the offers were not independently arrived at in open competition, were collusive, or were submitted in bad faith. The reason for the determination to cancel the solicitation shall be documented and made a part of the file.

### ~~6.2.23~~**6.2.17 Single Response to a Solicitation**

Even though multiple sources exist and are solicited through full and open competition, 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 proposal 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 contract terms are fair and reasonable.

### ~~6.2.24~~**6.2.18 Opening Proposals**

Public openings of proposals submitted in response to RFPs are not required. After the closing date and time for receipt of proposals, the Contracting Officer, or his representative, shall open the proposals in the presence of the Procurement and Contracts Department coordinator. The Contracting Officer, or his representative, and the Procurement and Contracts Department coordinator shall initial each proposal.

### ~~6.2.25~~**6.2.19 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 are related to a conformity determination as discussed in Paragraph 6.2.20. Clarifications may also be requested during the proposal evaluation process. Clarification is

achieved by explanation or substantiation, either in response (written or oral) to the Contracting Officer's or evaluation committee's inquiry. Uncertainties as to the financial offer or technical aspects of proposals may be resolved through clarification. Unlike discussion, clarification does not give the offeror the 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.

### ~~6.2.26~~**6.2.20 Review of Proposals – Conformity Determination**

The conformity determination begins after opening of the proposals and it continues until the contract is awarded. The general rule is that substantial deviations from the solicitation requirements cannot be waived or corrected after opening. A substantial deviation is one that goes to the substance of the proposal when it materially alters the financial offer, 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 6.2.19.

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

- (1) Proposal submitted to the Procurement and Contracts Department by the deadline date and time. See paragraph 6.2.11 for treatment of late proposals.
- (2) Submitted a hand-signed proposal form.
- (3) Proposal includes no material conditions, limitations or other qualifying statements unless allowed by the solicitation.
- (4) Acknowledge 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 Proposal submittal or on an

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earlier date to the Procurement and Contracts Department. There may also be a constructive acknowledgement of an amendment determined by the Contracting Officer from the circumstances surrounding the submittal of the proposal, e.g. submittal of a proposal with a form 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 that involves only a matter of form or has either no effect or merely a negligible effect on financial offer, quantity, quality, delivery or performance of the proposed concession will not be considered non-conformance.

- (5) Submitted its commitment to achieving the DBE participation goal or a Request for Good Faith Efforts waiver of the DBE participation goal, as required by the solicitation.

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.

## **6.3 PROPOSAL EVALUATION**

### **6.3.76.3.1 Composition of Evaluation Committee**

The Vice President for Business Administration or the appropriate Vice President and Airport Manager is responsible for establishing an Evaluation Committee (EC) when required to evaluate concession RFP proposals. The size and composition of the EC shall be tailored to each individual concession procurement action. The EC should have a minimum of 3 voting members with a broad base of experience. For larger or complex concession 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~~ 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 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 evaluation committee meeting in an advisory capacity.

### **6.3.86.3.2 Evaluation Process**

- (1) The Contracting Officer furnishes the Chair of the EC copies of the 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) The EC Chair shall establish a schedule for review and evaluation of proposals. It is important that all voting members attend meetings in which there is discussion of the proposals. Voting members who are unable to attend a meeting must first obtain the EC Chair's approval.
- (3) 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.
- (4) Financial Offer information included with the concession proposals shall be provided to the evaluation committee with the proposals unless otherwise directed by the Contracting Officer.
- (5) EC members shall evaluate each proposal against the evaluation criteria. The Chair of the EC and



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the Contracting Officer shall assure that scoring approaches used are consistent for all proposals. Although 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 as well as site visits and references. 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.

- (6) 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.
- (7) Working alone, the EC Members review the proposals, make notes concerning the strengths and weaknesses of each proposal with respect to each evaluation criterion, 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 evaluation committee 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 6.2.19). Minor technicalities pertaining to noncompliance may be waived.

- (8) When the financial offer is a factor, the following approach will be used by the Contracting Officer for assigning points to the financial offer criterion unless a different methodology is approved by the Manager, Procurement and Contracts Department. The highest financial offer proposal that conforms with the solicitation is awarded the maximum number of points for price. All other conforming proposals are prorated based upon the ratio of the highest financial offer to each of the lower financial offers. For example, financial offers of \$100 and \$90 are received and the maximum score available for the highest financial offer is 60 points. The \$100 offer will receive the full 60 points, while the points for the other offer are calculated as follows:

$$\frac{100}{60} = \frac{90}{x}$$

$$100x = 5400$$

$$x = 54 \text{ points for the \$90 offer.}$$

- (9) If Net Present Value (NPV) Analysis (Paragraph 6.2.5.5) is applicable for a solicitation, the NPV prices should be used for the calculations described in Paragraph 6.3.2).
- (10) 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 evaluation committee members. On-site inspections of offerors' facilities are permissible for the purpose of verifying information presented in proposals.
- (11) 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 6.2.20) or determine that the offeror is not responsible (Paragraph 6.3.8).
- (12) If determined by the evaluation committee Chair and the Contracting Officer to be in the best

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interest of the Airports Authority, the evaluation committee may establish a short-list or competitive range of offerors based upon its initial evaluation of the proposals and at subsequent points during the evaluation process.

- (13) The EC may conduct oral interviews with offerors within the short list 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 6.3.5, may be held with offerors on the short list or within the competitive range, in addition to or in lieu of oral interviews.

### **6.3.96.3.3 Correction of Mistakes Prior To Award**

If a successful 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 what the offeror actually intended. The offeror should submit its original work sheets, drafts, and other material used in preparing the proposal, or other evidence that could serve to establish the mistake, the manner in which the mistake occurred, and the proposal actually intended. The Contracting Officer shall evaluate the evidence submitted, and if it is found to be clear and convincing, and with approval of the Vice President and Airport Manager or the Vice President for Business Administration, the correction may be permitted. If a correction is permitted, the proposal 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 proposal from consideration; provided,

however, the offeror forfeit its proposal guarantee or bid bond if the offeror has been identified as the successful offeror and is so notified. Mistakes that are discovered or reported after contract award are covered in Paragraph 6.5.3.

### **6.3.106.3.4 Competitive Range/Short List**

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). A competitive range or short list may be established at any point during the evaluation process. The RFP will state whether the competitive range will be determined based on the evaluation criteria including the financial offer, or based on the evaluation criteria excluding the financial offer. 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 mostly highly rated proposals, it is by definition no longer in the competitive range and will no longer be considered for selection.

A competitive range of a single firm is possible if only one offeror is qualified or if one offeror is clearly more highly qualified than the others under consideration. A determination that there is a competitive range of only one firm must be approved by the Manager, Procurement and Contracts Department before further actions, such as oral interviews, discussions, or award of the contract, are taken by the Contracting Officer.

If a competitive range of firms is developed during the contract evaluation process, the firms that are not included in the competitive range will be notified and given the opportunity for a debriefing. Offeror requests for debriefing must be submitted in writing to the Contracting Officer within 15 days after the firm was advised they were unsuccessful. If the request is made prior to award and the offeror desires the debriefing to be prior to award, the Airports Authority may accommodate that request, but may proceed to award the contract prior to debriefing if the Manager,

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Procurement and Contracts, determines it is in the best interests of the Airports Authority to do so.

### ~~6.3.11~~**6.3.5 Discussions with Offerors**

An offeror 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 the 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 6.2.19 or correction of mistakes (Paragraph 6.3.3) will be considered discussion.

#### ~~6.3.11.16~~**6.3.5.1 Award May be Made Without Discussions**

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

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 business deal and is in the best interests of the Airports Authority.

Whenever there is uncertainty as to material aspects, financial or non-financial, 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 6.2.19) or correction of mistakes (see Paragraph 6.3.3) 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.

#### ~~6.3.11.26~~**6.3.5.2 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 financial offer. If the EC does not have access to the financial offer, the Contracting Officer, instead of the EC, may conduct discussions concerning the financial offer. In situations where the EC or Contracting Officer believes that financial offers are too low or 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. If there is only one offeror in the competitive range (see Paragraph 6.3.4), then discussions may be held with only the one firm.

Revisions to offers as a result of discussions are requested by issuing a request for Best and Final Offers per Paragraph 6.3.6.

### ~~6.3.12~~**6.3.6 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 upon the discussions, if any, that took place and a judgment by the Contracting Officer of the impact of the discussion on the offeror's proposals. Also, if the contract or statement of work requirements need to be clarified or changed, that should be done along with a call for best and final offers. If best and final offers are desired, the Contracting Officer will issue to all offerors still on the short list, if any, a request for best and final offers.

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The request for best and final offers shall 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 best and final offer 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. Offerors are not required to submit best and final offers.

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 offeror 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.

### **6.3.136.3.7 Final Evaluation and Recommendation**

At the conclusion of the evaluation committee's evaluation, which shall include the evaluation of any site visits, oral interviews or presentations, discussions and BAFOs, the evaluation committee voting members shall finalize their evaluation of the individual offerors. The evaluation committee chairman shall compile the evaluation committee's score and determine the ranking of offerors based upon the evaluation committee's evaluation. This shall be provided to the Contracting Officer, who shall add the financial offer score if this was not part of the evaluation committee's evaluation and determine the ranking of the proposals. The evaluation committee then will determine the apparent successful offeror and make a recommendation of award to the Contracting Officer.

### **6.3.146.3.8 Determination of Responsibility**

Contracts are awarded only to responsible contractors. To qualify for award a prospective contractor must affirmatively demonstrate that it meets general standards of responsibility. The prospective contractor may also be required to show 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 supplier of the concession services sought in the solicitation.
- (2) Have the ability to comply with the required performance schedule, taking into account other business commitments.
- (3) Have a satisfactory record of performance.
- (4) Have a sound record of integrity and business ethics.
- (5) Have the necessary organization, experience, skills and financial resources to fulfill the terms of the contract.

### **6.3.14.16.3.8.1 Commitment to DBE 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 6.2.20. All other matters relating to DBE participation proposed by an offeror will be treated as matters relating to the offeror's responsibility.

### **6.3.14.26.3.8.2 Special Standards of Responsibility**

Special standards of responsibility may be used when the nature of the concession is such that contractors must have unusual expertise, specialized facilities, or other special qualifications to assure satisfactory contract performance. The special responsibility standards will be set forth in the solicitation and must apply to all offerors.

### **6.3.14.36.3.8.3 Licensing Requirements**

Contractors are responsible to comply with all applicable licensing requirements for themselves and their subcontractors.

### **6.3.14.46.3.8.4 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



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contractor may be required to provide written evidence of a proposed subcontractor's responsibility.

6.3.14.56.3.8.5 Sources for Determining Responsibility

The Contracting Officer can use a variety of sources to collect "responsibility" information: the prospective contractor, previous clients, 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 value and complexity of the concession, and may include examination of financial statements and records, and on-site inspections of offices and other concession locations.

6.3.14.66.3.8.6 Responsibility Findings

Contracting Officers must document in the contract file their responsibility findings.[]

Communication with a prospective offeror for the purpose of obtaining or clarifying information needed to determine responsibility is not considered "discussion" and does not require that discussions be held with all those on the short list.

A letter of notification with specific reasons for a finding that the 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 the Office of General Counsel. The Offeror has the right to respond if desired.

6.3.156.3.9 **Pre-Award Conference**

Pre-award Conferences are an effective management tool for complex concession 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.

**6.4 CONTRACT AWARD**

The Contracting Officer will ensure that all significant contracting actions are taken before award. This shall include securing required Board approval (see Paragraph 6.1.4); Office of General Counsel coordination, when appropriate; verifying that bonds or guarantees and insurance are in place; and that the award does not exceed the authority in the Contracting Officer's appointment letter.

Unless otherwise authorized by the President and Chief Executive Officer, staff shall not authorize contractors to commence performance before the contract is awarded, i.e., the date the contract has been executed by both the contractor and the Contracting Officer. In the event performance to commence prior to award has been authorized, the Contracting Officer shall ratify such performance at the time the contract is awarded.

6.4.76.4.1 **Apparent Successful Offeror**

After the apparent successful offeror is identified by the Contracting Officer and after any DBE or legal issues are resolved, the Contracting Officer shall forward the contract to the apparent successful offeror for its signature and request a performance guarantee and certificate of insurance, if applicable. The contractor shall sign the contract and return the guarantee and insurance certificate, if applicable, and any other documents requested, to the Contracting Officer. When the performance guarantee, insurance certificate, signed contract, and any other required documents are received and the offeror has been



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deemed responsible, the Contracting Officer will execute the contract. The contract is considered to have been “awarded” when it is executed by both the successful offeror and the Contracting Officer.

To be effective, the award must be properly executed by both the successful offeror and the Airports Authority and furnished to the successful offeror within the acceptance period. If the award cannot be made within the stated contract acceptance period, the Contracting Officer must request an extension of the acceptance period from the apparent successful offeror.

Contracting Officers must ensure that all arrangements, understandings and agreements that they have reached verbally with the contractor are in writing and made a part of the contract, either in the main body of the contract or as an attachment. All or part of the Contractor's proposal may be included as an attachment to the contract. If the contractor's proposal documents have been marked confidential, the file should be clearly marked to ensure that this portion of the contract is not released to the public.

After the contract is awarded, it will be forwarded to the Vice President and Airport Manager or the Vice President for Business Administration for contract administration.

#### **6.4.86.4.2 Multiple Awards and Split Awards**

If permitted by the solicitation and it is in the Airports Authority's best interest to do so, the Airports Authority may award the concession contract to multiple offerors.

#### **6.4.96.4.3 Use of Contractor's Standard Contract Form**

The use of a contractor's standard contract form should be avoided. Airports Authority documents are preferred.

## **6.5 POST-CONTRACT AWARD**

### **6.5.76.5.1 Notifying and Debriefing Unsuccessful Offerors**

The Contracting Officer will notify offerors promptly when their proposals are excluded from the competitive range or otherwise eliminated from the competition. Prompt notification of the name and address of the firm selected for award and the total financial offer will be made to offerors whose proposals were in the competitive range but not selected for award.

A debriefing affords an opportunity for an unsuccessful offeror to be informed regarding the basis for final selection and contract award as it specifically relates to the offer submitted by the unsuccessful firm. The nature of the concession solicitation process is such that debriefing requests will generally involve solicitations that contained evaluation criteria in addition to financial offer. Where financial offer was the only factor, a debriefing will not normally be conducted.

A firm may desire to learn as much information as possible concerning how its offer was evaluated by the Airports Authority so that it can reevaluate and perhaps change its future approach to the information requested by the solicitation, strategy for developing its financial offer, or other aspects of future offers. The following paragraphs reflect some basic principles that apply to Airports Authority notifications and debriefings.

Offeror requests for debriefing must be submitted in writing to the Contracting Officer within 15 days after the firm was advised in writing by the Contracting Officer that they were unsuccessful. If the request is made prior to award and the offeror desires the debriefing to be prior to award, the Airports Authority will endeavor to accommodate the request, but may proceed to award the contract prior to the debriefing if the Vice President and Airport Manager or the Vice President for Business Administration determines it is in the best interests of the Airports Authority to do so.

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The Contracting Officer has primary responsibility for responding to debriefing requests; staff assistance will be requested as needed. In conducting a debriefing, the Contracting Officer will concentrate on information that can be of benefit to the firm without revealing any sensitive or proprietary data regarding the competition. Paragraph 6.2.10 of this Manual, relating to release of information, will apply. Airports Authority debriefings are structured to protect the integrity of information submitted by all competitors. Concentration will be on the firm being debriefed, their submittal, and when appropriate, a general description of the basis for the Airports Authority's selection decision. The debriefing will address the strengths and weaknesses of the firm as related to the evaluation criteria in the solicitation.

### ~~6.5.86.5.2~~ **Pre-Performance Conference**

Pre-performance conferences may be convened prior to the start of concession operations or concession build-out preparations as determined to be necessary by the Contracting Officer. The agenda for such conferences may include:

- (1) Introductions of key personnel from both parties,
- (2) COTR designation letter and responsibilities,
- (3) Safety and security presentation,
- (4) Schedule for commencement of concession build-out (if any) and operations,
- (5) Payment procedures,
- (6) DBE presentation, if desired by Equal Opportunity Programs Department,
- (7) Publicity releases must be approved by the Contracting Officer prior to release to the media, and
- (8) Build-out procedures and restrictions, if appropriate, including inspection procedures, insurance issues, etc.

### ~~6.5.96.5.3~~ **Correction of Mistakes after Award**

#### ~~6.5.9.16.5.3.1~~ **Correction by Modification**

When a mistake in a contractor's offer is not discovered until after the award, the mistake may be

corrected by contract modification if correcting the mistake would be favorable to the Airports Authority without changing the essential requirements of the contract.

#### ~~6.5.9.26.5.3.2~~ **Other possible actions**

In addition to the situation contemplated in Paragraph 6.5.3.1 above, if a mistake in a contractor's offer is discovered after award, the Airports Authority may:

- (1) Rescind the contract.
- (2) Reform the contract to delete the items involved in the mistake or to decrease the financial offer, if the financial offer as corrected will not be lower than that of the next highest acceptable offer in response to the solicitation.
- (3) Make no change to the contract if the evidence does not warrant a determination under Paragraph 6.5.3.1 or 6.5.3.2 (1) or (2).

#### ~~6.5.9.36.5.3.3~~ **Clear and Convincing Evidence**

The actions authorized by Paragraphs 6.5.3.1 and 6.5.3.2 above may be made only on the basis of clear and convincing evidence that a mistake in offer was made and it must be clear that the mistake was mutual or, if unilaterally made by the contractor, the mistake was so apparent that the Contracting Officer should be charged with notice of the probability of mistake.

## **6.6 TWO-PHASE CONCESSION SOLICITATION**

Two-phase competitive proposals may be used when deemed appropriate. Phase 1 consists of a Request for Qualifications Information (RFQI) which provides a description of the Airports Authority's requirements and the evaluation criteria on which the qualifications submittals will be evaluated. Phase 2 requests financial offers and in some cases additional information about the offeror's plans for the concession operation.

### ~~6.6.76.6.1~~ **Phase One**

Phase One consists of a Request for Qualifications Information which requests all potential sources to submit qualification statements. The RFQI shall also

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describe the Airports Authority's requirements in general terms and identify the evaluation criteria that will be used. Any mandatory qualification information to be submitted and any optional information desired will be identified.

The solicitation shall explain the two-phase procedure and emphasize that the response to Phase 1 is not to include a proposed financial offer. Alternatively, it may require that financial offers be submitted in separate sealed envelopes as part of Phase 1; in this case only those offerors who submit acceptable qualifications would have their pricing envelopes opened in Phase 2 and the remainder would be returned unopened to the offerors.

## ~~6.6.86.6.2~~ **Phase Two**

At the conclusion of Phase 1, if pricing has not previously been presented, the Contracting Officer will prepare a Request for Proposals (RFP) which includes a pricing schedule and references the Phase 1 request by title and number. The RFP will call for financial offers, and when appropriate, more detailed submissions concerning the offeror's proposal for the concession. If additional information concerning the offeror's proposal for the concession is required, the RFP will include evaluation criteria. The procedures in this chapter governing receipt, evaluation and handling of proposals and award of the contract shall apply to proposals submitted in response to a Phase 2 RFP.

## **6.7 CONTRACT ADMINISTRATION**

After the contract is awarded, it will be administered by the Contracting Officer or by the Contracting Officer's Technical Representative. No changes to the contract terms and conditions should be made without the written consent of the Contracting Officer.

### ~~6.7.76.7.1~~ **Contract Modifications**

Ideally, an awarded contract is complete and comprehensive. Its terms are adequate to define and specify the obligations and rights of the parties. Modifications of the contract are not contemplated at the time that it is signed. As a practical matter,

however, few contracts are completed without some modification.

Modifications originate primarily from three sources:

- (1) Airports Authority-initiated changes
- (2) Contractor-requested changes.
- (3) Changes that result from actions of Airports Authority personnel who lack contractual authorization (constructive changes).

### ~~6.7.7.1~~ **6.7.1.1 Modifications Within Scope vs. New RFP**

~~Contracting Officers must evaluate whether a proposed contract modification is within the general scope of the contract. If it is not, then a new concession procurement may be needed.~~

~~An example of new procurement is the addition of services that are completely unrelated to the services called for by the existing contract. Adding new services that are not within the existing contract's general scope of work shall be treated as new procurement.~~

~~Additional services can be added to an existing contract, even if the additional services are of considerable magnitude, if it clearly appears that the work is within the general scope of work of the existing contract. In such case, a contract modification by supplemental agreement will be made. Examples of contract modifications within the general scope of the contract include-~~

- ~~(1) Amplification or clarification of the contractor's privileges and responsibilities;~~
- ~~(2) Authorizing services that were contemplated or anticipated in the contract.~~
- ~~(3) Extending the contract performance period because the Airports Authority is not yet ready to award the next contract for the concession (however this extension period cannot exceed twelve months unless approved by the Board).~~
- ~~(4) Authorizing additional services that were not originally contemplated but are now desired and the nature of the services is such that they would~~

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be a logical extension of the existing contract; and

- (5) ~~Eliminating or reducing services that were in the contract but are no longer required.~~

~~Occasionally, the Airports Authority may choose to modify an existing concession agreement to add new services not within the original scope of contract. In this situation, the necessary sole source determination must be documented and Board approval obtained.~~

~~The decision to add new concession services not within the scope of the original concession contract should include consideration of the following factors:~~

- ~~(1) The age of the existing contract.~~
- ~~(2) Whether modification will require a substantial extension of the contract term.~~
- ~~(3) The existence of any previous out of scope modifications.~~
- ~~(4) The extent to which the contract terms must be modified to accommodate the new services.~~
- ~~(5) The quality of the contractor's concession operation and the cooperation, ability, and willingness of the contractor to take on additional services.~~
- ~~(6) The possible time and cost benefits of using a contractor who is already operating.~~
- ~~(7) Whether the new concession services would offer a strong enough business opportunity on their own to be the subject of a separate contract.~~
- ~~(8) The disadvantage of not having the benefit of full and open competition.~~

Any change in the price or terms of a contract may be authorized by the Contracting Officer only after reviewing the circumstances giving rise to the change and making a determination that the change is justified and falls within the scope of the contract. Any changed authorized by the Contracting Officer requires a modification of the contract by issuance of either a change order or a contract modification. A change order or contract modification shall not be effective until the order or modification has been approved and signed by the Contracting Officer and funds for the change have been obligated.

Changes to a contract that do not fall within the scope of the contract must be treated as a new procurement. Within-scope work is defined as work that an offeror would reasonably expect to occur at the time that the offeror submitted its proposal. Work not contemplated by the original solicitation will not be considered in scope, even if the work has since become integral to the project. Modifications that significantly increase the dollar value of the contract may also be considered out of scope. For example, if a contract has an original value of \$10,000, a modification to add \$1 million to the contract may be so fundamental a change that the modification be considered out of scope.

#### 6.7.1.2 Negotiation of Contract Modifications

Modifications of concession contracts are reached by mutual consent through negotiation. They must include all the elements of a legal contract. Furthermore, no provision required by law can be deleted or modified, nor can the Contracting Officer consent to a waiver of any of the substantive rights of the Airports Authority without consideration. Subject to these limitations, however, many changes can be made to an existing contract if both parties agree. The financial offer can be adjusted, contract term can be changed; premises altered, etc.

#### 6.7.1.3 Constructive Changes

Although all contract changes should be negotiated in advance and put in writing by the Contracting Officer, sometimes the Contracting Officer or other Airports Authority employees may take certain actions, verbal or otherwise, which change the contract. Such changes are called "constructive changes." A constructive change occurs when the contractor acts in response to a directive from an Airports Authority official with apparent authority to commit such actions when they are clearly beneficial to the Airports Authority. Only the Contracting Officer has the right to contractually commit the Airports Authority; however, sometimes immediate action is desirable. In such a case, the contractor might follow directives from the Contracting Officer's Technical Representative (COTR) or other officials, and the Contracting Officer may recognize the benefit to the Airports Authority by



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issuing a contract modification ratifying the changes. The Contracting Officer has no legal obligation to ratify actions taken by individuals who have no contracting authority, however.

#### **6.7.86.7.2 Extension of Contracts**

It may be in the Airports Authority's best interest to continue a contract beyond its defined completion date or expiration. The Board has authorized the President and Chief Executive Officer (CEO) to grant an extension of up to twelve months of any concession contract necessary to maintain services and revenue during periods when timely award of a new contract cannot be made before the expiration of the current one, provided that the Business Administration Committee is notified of the need to grant such extensions at the earliest possible occasion before they are granted. Any time this authorization to extend a contract is to be used, a memorandum from the Vice President and Airport Manager or the Vice President for Business Administration shall be sent to the President and CEO with appropriate justification for the extension. If approved, this memorandum shall be placed in the contract file.

Sole source extensions beyond 12 months shall be treated as a new sole source contract, and Board approval of the extension is required. Extension requests must be initiated by the Vice President and Airport Manager or the Vice President for Business Administration, must state the reasons for the request, be sent to the Chief Operating Officer and Chief Executive Officer, and be accompanied by a concurrence or non-concurrence by the Vice President of Business Administration.

#### **6.7.96.7.3 Termination and Temporary Suspension of Concession Operations.**

The Airports Authority may order a contractor to cease operations temporarily or permanently for reasons such as the closure or substantial restriction of airport operations by the federal government, airport safety or security issues, an order issued by a court of competent jurisdiction, or other extraordinary situations where such action is necessary. If a termination or temporary

suspension occurs, the contractor may be granted an equitable adjustment recognizing the contractor's expenses associated with the termination or suspension. Equitable adjustments shall not include amounts for anticipatory profit.

The Airports Authority may include contract provisions that establish the circumstances under which suspension or termination may occur, the rights of the contractor and the Airports Authority in the event of such suspension or termination, and the manner of calculating an equitable adjustment for the contractor. The presence of such provisions in the contract is not a prerequisite to the Airports Authority's exercise of its rights under this clause

#### **6.7.106.7.4 Contractor Performance**

Contracting Officers, assisted by the Contracting Officer's Technical Representative, if any, are responsible for monitoring the contractor's performance and compliance with the terms of the contract.

##### **6.7.106.7.4.1 Documentation of Performance Critically Important**

The Contracting Officer and the Contracting Officer's Technical Representative must document incidents of poor performance and create a record that will support formal actions to enforce contract terms and conditions.

Contracting Officers or COTRs shall arrange meetings with the contractor, publish minutes, and build a record. The records must be detailed and reflect ongoing communications with the contractor, both verbal and written. Any recommendation that the COTR may make to the CO for issuance of a cure notice must be supported by documentation of the situation. A recommendation by the COTR to send a cure notice must be given serious consideration by the CO since it could be the precursor to a show cause letter followed by contract termination.



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#### 6.7.10.26.7.4.2 Contractor Performance Evaluation Reports

Performance evaluations should be conducted for selected contracts during the period of performance in order to provide useful feedback to contractors on their performance and to provide them the opportunity to correct problems before contract completion. Unless the CO directs otherwise, the COTR will be responsible for preparing the actual reports on the frequency established by the Contracting Officer (generally every six months). The format of the report form will be tailored as appropriate to accommodate the nature of the contract. This is an important part of the Co's responsibility and the report must be done in a timely and impartial manner. The preparer of the report shall certify that to the best of his or her knowledge the facts and statements therein are accurate and that it represents the preparer's assessment of the contractor's performance during the rating period. The report will be sent to the contractor for comment and return to the Airports Authority. If the contractor's response contradicts the report, an effort should be made to reconcile the differences.

After the report is returned to the Airports Authority, it will be entered into an electronic database from which it will be available for future use in the Airports Authority's contractor selection process or for other reasonable and lawful use by the Airports Authority.

#### 6.7.10.36.7.4.3 Cure Notice

The purpose of a cure notice is to inform a contractor that its performance is deficient and the contractor has a specified period to cure the contract performance. Contracting Officers, generally based on a recommendation by the COTR, who believe that contractor is failing to perform according to contract terms and conditions, shall notify the Vice President and Airport Manager or the Vice President for Business Administration and the Office of General Counsel prior to sending a cure notice to the contractor and company supplying the performance guarantee.

#### 6.7.10.46.7.4.4 Show Cause Notice

If the contractor fails to cure the deficiencies within the time allowed in the cure notice, the Contracting

Officer, with approval of the Vice President and Airport Manager or the Vice President for Business Administration, and after coordination with the Office of General Counsel, will send a show cause notice to the contractor and, if applicable, the company furnishing the performance guarantee. The letter, which in some instances may not have been preceded by a cure notice, will inform the contractor that contract termination will result unless the contractor submits good and substantial evidence why the contract should not be terminated.

#### 6.7.116.7.5 DBE Compliance

Contracting Officers are responsible for monitoring the contractor's DBE compliance by requesting evidence of DBE participation as specified by the contract. Assistance to the Contracting Officer will be provided by Equal Opportunity Programs Department.

#### 6.7.126.7.6 Termination for Default

The contract's Default provision establishes the reasons and procedure under which the Airports Authority may terminate a concession contract for default. If there is a performance bond associated with the contract, a copy of the default notice will be furnished to the contractor's surety.

If a contract is terminated for default or if a course of action in lieu of termination for default is followed, the Contracting Officer shall take appropriate action for ascertaining and collecting any liquidated damages that the Airports Authority may be entitled to under the contract, pursuant to the contract provisions for liquidated damages. If the Airports Authority has suffered any other ascertainable damages as a result of the contractor's default, the Contracting Officer, on the basis of legal advice from the Counsel, shall take appropriate action to assert the Airports Authority's claim for such damage.

In all cases where a contract is terminated for default, the Contracting Officer shall prepare a memorandum for the contract file explaining fully the reasons for the action taken.

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### ~~6.7.13~~ **6.7.7 Contract Expiration**

Prior to the end of the contract, the Contracting Officer shall ensure that the contractor has complied with all contract requirements and that the Airports Authority has met its obligations. The Contracting Officer should coordinate with appropriate Airports Authority offices, such as Audit, Risk Management, Equal Opportunity Programs, etc., to determine whether there are any outstanding issues. Outstanding issues should be resolved prior to the end of the contract, if possible. The Contracting Officer shall also ensure that the contractor understands its obligations with respect to any transition to a new concession contractor.

Both prior to the end of the contract and immediately after the contractor vacates the premises, the Contracting Officer shall inspect the premises and any other assigned facilities or space to determine their condition. If title to facilities, improvements or equipment will be transferred by the contractor to the Airports Authority or to a successor contractor at the end of the contract, the Contracting Officer shall obtain appropriate documentation showing the transfer of title.

### ~~6.7.14~~ **6.7.8 Disputes**

Disputes between the contractor and the Airports Authority that arise during contract performance shall be handled in accordance with the provisions of Chapter 8, which are incorporated herein by reference.

## **6.8 REVIEW OF CONCESSION CONTRACT ACTIONS**

All concession solicitations and contracts, and amendments thereto shall be reviewed by the Office of the General Counsel and the Office of Audit.

Contract modifications, protests, default situations, terminations, suspected fraud or criminal violations, and disputes shall be submitted for legal review. Letters informing offerors that their proposals were eliminated from competition or that their proposals were found not in conformance with the solicitation requirements or that the offeror was found not responsible also require legal review.

## **6.9 AUDIT AND INSPECTION OF RECORDS**

Each concession contract shall include a provision requiring the contractor to maintain certain records and permitting the Airports Authority to audit and inspect these records at any time during the term of the contract and for three years after the expiration or termination of the contract. At a minimum, the audit and inspection of records provision shall require the following:

- (1) The contractor shall maintain records and the Contracting Officer, or his designee, shall have access to and the right to examine at reasonable times any pertinent books, documents, papers and records of the contractor involving the formation of the contract, transactions related to the contract, and operation of the concession, for the purpose of inspection, audit, examination, transcription and the making of excerpts.
- (2) The contractor shall include a provision in all of its subcontracts and joint venture agreements entered into pursuant to the contract to the effect that the Contracting Officer, or his designee, shall have similar access to and the right to examine at reasonable times any pertinent books, documents, papers and records of the subcontractors or joint venture partners involving all aspects of the concession contract, including formation, and all aspects of the concession operations.
- (3) The Contracting Officer, or his designee, shall have the broad rights of audit and inspection including, but not limited to the right to examine books, records, documents and other evidence and accounting procedures and practices, sufficient to reflect properly all aspects of the concession, including, but not limited to, gross receipts and, if the contract is for the management of a concession, all direct and indirect costs of whatever nature that have been incurred in the performance of the contract. Failure to maintain such records shall be a bar to

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any claim, legal or equitable, by the contractor against the Airports Authority.

- (4) The contractor shall maintain records required by this provision throughout the term of this contract and for three years after termination or expiration of the contract. The Airports Authority's rights of access, examination, audit and inspection under this provision shall continue throughout the term of the contract and for three years after the termination or expiration of the contract.
- (5) The Airports Authority's right of examination shall include inspection at all reasonable times of the premises assigned to the contractor.
- (6) The Airports Authority's rights under this provision shall be in addition to any other audit and inspection rights under the contract.

### **6.10 MANAGEMENT CONTRACTS**

Some of the Airports Authority's concession contracts, such as the contracts for the operation of the airport public parking lots and the operation of the taxicab dispatch system, take the form of management contracts. This generic category of contracts provides for the contractor to manage a revenue-producing operation for the Airports Authority. The Airports Authority pays the contractor for allowable actual costs incurred by the contractor plus a fee (the contractor's profit).

Costs incurred by concession management contractors are normally reimbursed only if the costs have been included in an annual budget approved by the Contracting Officer or the Contracting Officer's Technical Representative. Costs not included in the budget, or which exceed the approved budget, will not be reimbursed unless approved by the Contracting Officer.

As a general matter, the fee (profit) to be paid to the contractor shall be fixed for each year. In order to provide for less costly or more efficient or higher quality management, the Airports Authority may include a bonus or incentive payment provision in the contract. The bonus or incentive amount will be paid

to the contractor only if it achieves certain objectives described in the contract.

### **6.11 SUSPENSION AND DEBARMENT**

The provisions of Chapter 9, Suspension and Debarment, apply to Airports Authority concessions contracts and are incorporated by reference.

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## 7 **PROTESTS**

The procedures for protesting a solicitation, a proposal or an actual award of a contract are presented in this chapter.

### **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.



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

If a contract has not already been awarded at the time a protest is timely filed, the President and Chief Executive Officer may proceed with award of that contract and notice to proceed while the 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.

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## 8 **DISPUTES**

Chapter 8 describes the general procedures for the handling of contract disputes.

### **8.1 DISPUTES - GENERAL**

The following provisions contain the Airports Authority's general procedures for the handling of contract disputes. Other dispute resolution procedures may be appropriate for certain Airports Authority contracts and may be used by the Airports Authority if approved by the Manager of Procurement and Contracts Department and coordinated with the Office of General Counsel.

It is the Airports Authority's policy to encourage resolution of disputes by mutual agreement between the Contracting Officer and the contractor. Consistent with this intent, the Airports Authority requires, as a condition precedent to the initiation of litigation, the exhaustion of the administrative dispute procedure contained in the contract. If the dispute is not resolved by the administrative disputes procedure, the contractor may proceed to court litigation in accordance with the agreements contained in the contract.

**NOTE:** For solicitations funded by the Federal Transit Administration, see Paragraph 10.7.36 of this Manual for additional guidance on special requirements and restrictions.

### **8.2 WAIVER OF JURY TRIAL**

The following waiver of jury trial provision shall be included in each Airports Authority contract:

#### **Waiver of Jury Trial:**

To the fullest extent permitted by law, the contractor and the Airports Authority hereby waive their respective rights to a trial by jury on any dispute or claim or cause of action upon, arising under, arising out of or related to, the contract. In addition, the contractor and the Airports Authority hereby waive their respective rights to trial by jury in any other proceeding or litigation of any type brought by any of the contracting parties against the other party

whether with respect to contract claims or actions, tort claims, or otherwise. Without limiting the foregoing, the Airports Authority and the contractor further agree that their respective rights to a trial by jury are waived as to any action, counterclaim, or other proceeding which seeks, in whole or in part, to challenge the validity or enforceability of the contract. This waiver of jury trial shall also apply to any subsequent amendments, modifications, renewals or supplements to the contract.

### **8.3 DISPUTES PROVISION**

A disputes provision shall be included in each Airports Authority contract. The text of the disputes provision shall be determined by the Manager of Procurement and Contracts Department.

The disputes provision is to apply to all disputes except disputes alleging a material breach of contract.

The disputes provision shall set forth the disputes procedure for disputes under remedy-granting contract provisions and non-material contract breaches. The provision must provide for the exhaustion of the disputes procedure as a condition precedent to the initiation of litigation.

The following language is mandatory in order to implement the disputes procedure:

#### **Performance Pending Dispute**

The contractor shall proceed diligently with performance of the contract's requirements, including the disputed portions, pending resolution of any dispute.

#### **8.3.78.3.1 Steps of Administrative Disputes Procedure**

The disputes provision shall address the claim submission requirements such as notice and the time

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for presenting a submission, certification, and documentation that must be submitted with the claim. The following claim submission contract language should be considered by Contracting Officers for incorporation in a comprehensive disputes provision:

#### **Claim Submission**

The contractor shall submit a written claim signed and certified as true and accurate, by a duly authorized officer of the contractor. The claim at a minimum shall include a) the basis of liability; b) basis of request for additional compensation, time extension request or other relief requested; c) a narrative that fully explains the basis for liability; d) the claim must state that it is made in good faith, that the supporting facts and data are current, accurate and complete as of the date of certification, and the amount of additional compensation, time of performance, or other relief requested reasonably and accurately reflect the added cost, added time of performance, or other damage the Contractor reasonably believes it has incurred; and e) the claim must include or specifically reference all actual cost accounting records, actual schedule data, as-built data, or other data or facts that relate to any aspect of the contractor's claim.

#### **Prohibited Claim Formats**

Monetary claims based on anticipatory profits are prohibited. Monetary claims requests based on a total cost approach are prohibited. Time extension requests or claims on a total time approach are prohibited.

### **8.3.88.3.2 Claims Review and Disposition**

The comprehensive disputes provision shall also include a procedure for claims review and disposition. The following topics shall be addressed in the procedure: Contracting Officer Discussions, Information Exchange and Audit Access, Alternative Disputes Resolution Procedures and the issuance and finality of a Contracting Officer's Decision. The general nature of these topics is addressed below:

#### **8.3.8.18.3.2.1 Contracting Officer Discussions**

Discussions between the Contracting Officer and the contractor concerning the claim presented shall occur within a reasonable period of time after submission of the claim and receipt by the Contracting Officer of sufficient information, including information resulting from an audit, if deemed necessary. Discussions shall be conducted in good faith for the resolution of the dispute, including the exchange of relevant information. If requested by the Contracting Officer, the COTR shall provide the Contracting Officer with a written response to the claim that references the applicable provisions of the statement of work or contract requirements and may include a specific request that the COTR obtain additional information or audit access, or both. The contractor shall provide such additional information or audit access. The disputes provision shall provide that the contractor is to furnish the information and audit access and failure to provide such information or access shall be a bar to the claim.

#### **8.3.8.28.3.2.2 Alternative Disputes Resolution**

The Contracting Officer should consider the inclusion of a contract provision that requires the exhaustion of an alternative disputes resolution (ADR) procedure prior to litigation. One form of ADR that should be considered is non-binding evaluative mediation if adopted as a provision of the contract. Such contract provision shall, at a minimum, include terms that provide for: the time and place of mediation; that the mediation is conducted pursuant to the contract; the selection of the neutral mediator as defined in Virginia Code Section 8.01-0576.4; that all statements made during the course of the mediation are confidential in accordance with Virginia Code Section 8.01-0576.10, are privileged settlement discussions, are not party admissions and are made without prejudice to any party's legal position; that materials prepared for the mediation are not subject to disclosure in any other judicial or administrative proceeding; that allow for informal discovery in the form of production or inspection of certain categories of documents; and an agreement to split evenly the costs of the mediator and any incidental costs associated with holding the mediation.

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#### ~~8.3.8.38.3.2.3~~ Impasse and Litigation

If discussions with the Contracting Officer or, if required, an ADR procedure, does not result in an agreement, an impasse can be declared.

Upon the declaration of an impasse, the Contractor shall request a written final decision by the Contracting Officer. The Contracting Officer shall issue a final decision within sixty (60) calendar days from receipt of the request and adequate documentation unless the dispute is determined to be complex in nature. The final decision of the Contracting Officer shall be final and conclusive unless within thirty (30) calendar days from receipt of the Contracting Officer's final decision, the contractor mails or otherwise furnishes a written notice of appeal to the Manager of Procurement and Contracts Department.

#### ~~8.3.8.48.3.2.4~~ Litigation

Following completion of the administrative dispute resolution process including providing the notice of appeal, the dispute may be resolved by litigation without a jury before a court of competent jurisdiction within the Commonwealth of Virginia.

### **8.4 REMEDIES FOR INAPPROPRIATE CLAIMS**

The contract shall contain remedies for the Airports Authority for reckless or frivolous claims and false, misleading, or material misrepresentations relating to claims. The following contract provisions shall be included:

#### **Remedies for Reckless or Frivolous Claims**

In the event that the contractor makes a claim against the Airports Authority and the contractor's claim, as certified by an officer of the contractor, is 1) found by a court to be based on any reckless statement contained in the certification of the claim or 2) is found by a court to be of frivolous nature or materially overstated in amount, then the contractor shall be liable to the Airports Authority and shall pay to it a percentage of costs incurred by the Airports Authority in investigating, analyzing, negotiating, mediating and litigating (including

attorneys' fees) the frivolous or overstated claim. The percentage of costs referenced shall be equal to the percentage of the contractor's total claim which is determined through litigation to be the result of a reckless statement or frivolous claim. "Frivolous" shall mean having no basis in law or in fact. This remedy is a contractual remedy and does not otherwise affect the other rights of the Airports Authority in law or in equity.

#### **Remedies for False or Misleading Statements or Material Misrepresentation**

Any claim by the contractor that is based on false or misleading statements or material misrepresentations shall entitle the Airports Authority to a full recovery of all costs incurred by the Airports Authority in investigating, analyzing, negotiating, mediating and litigating (including attorneys' fees) the claim. This remedy is a contractual remedy and does not otherwise affect the other rights of the Airports Authority in law or in equity.

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## 9 **SUSPENSION AND DEBARMENT**

Chapter 9 presents the procedures through which a contractor may be suspended or debarred from doing business with the Airports Authority. It includes a non-exclusive list of possible causes for suspension or debarment, the procedures that the Airports Authority will follow when determining whether to suspend or debar a contractor, the procedures by which a contractor may seek review of an Airports Authority determination to suspend or debar it, and the consequences of suspension or debarment.

### 9.1 **POLICY**

The Airports Authority shall solicit offers from, award contracts to, and consent to subcontract only with responsible contractors. See CM ¶¶ 2.4.6 and 6.3.8. To effectuate this policy, the Airports Authority may suspend or debar a contractor from entering into new Airports Authority contracts or subcontracts in accordance with the procedures in this Chapter.

### 9.2 **NATURE OF SUSPENSION AND DEBARMENT**

The purpose of suspension and debarment is to protect the integrity of the Airports Authority's contracting process. The Airports Authority seeks to do business only with contractors who can be trusted business partners. Suspension and debarment are not imposed as punishment, although each may bear heavy direct and collateral consequences. The nature of suspension and debarment is to make ineligible for contracting opportunities those contractors that (i) lack business integrity or honesty; (ii) lack the responsibility to satisfactorily perform contract work; or (iii) evidence any other cause of such serious and compelling nature as to affect the present responsibility of the contractor.

### 9.3 **DEFINITIONS**

- (1) *Affiliate.* A business, organization, person, or individual connected to another by the fact that one controls or has the power to control the other or by the fact that a third party controls or has the power to control both. In addition, the Airports Authority has the discretion to determine whether an entity is an affiliate by considering such factors as common ownership, common management, shared or overlapping facilities, equipment, and/or employees, identity of

interests among family members and/or that the business entity is managed or organized by owners, operators, management, and/or immediate family of an entity that previously contracted with the Airports Authority.

- (2) *Airports Authority Debarment Judge (ADJ).* An individual selected by the Airports Authority's General Counsel from an impartial source, meaning current or former employees of the suspension and debarment organizations of federal, state and/or local governments or public entities, the American Arbitration Association, the Federal Mediation and Conciliation Service, former federal or state judges or other similar individuals, to serve on one or more suspension or debarment matters and/or for a fixed period of time to handle suspension and debarment matters.
- (3) *Contractor.* For the purposes of Chapter 9, an individual, company or other legal entity that directly or indirectly (e.g., through an affiliate), submits a bid or offer or is awarded a contract or subcontract to supply goods or services, to perform construction or to perform a concession for the Airports Authority. See also Appendix A-2.
- (4) *Debarment.* An exclusion from contracting and subcontracting with the Airports Authority for a specified period of time.
- (5) *Suspension.* An exclusion from contracting or subcontracting with the Airports Authority for a reasonable period of time prior to the initiation and during the pendency of the debarment process.

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#### **9.4 DELEGATION OF AUTHORITY TO MAKE SUSPENSION OR DEBARMENT DETERMINATIONS**

The Executive Vice President and Chief Operating Officer (“Executive Vice President”) has the authority to determine whether to suspend any contractor pending completion of debarment proceedings. The Executive Vice President also has the authority to determine whether to debar any contractor for the causes set forth in paragraphs 9.5.1(1)-(5). An Airports Authority Debarment Judge (“ADJ”) has the authority to determine whether to debar any contractor for the causes set forth in paragraphs 9.5.1(6)-(9) or for an affiliation or connection as provided in paragraph 9.5.2.

#### **9.5 DEBARMENT**

The Airports Authority may debar a contractor for any of the causes listed in paragraph 9.5.1. The existence of any of the causes for debarment does not necessarily require that a contractor be debarred. The decision to debar is within the discretion of the Airports Authority. The Airports Authority may, but is not required to, take into account what mitigating factors it deems relevant.

##### **9.5-79.5.1 Causes for Debarment**

The Airports Authority may debar a contractor up to 5 years for any of the reasons listed below.

- (1) conviction of a criminal offense or a civil judgment for commission of a fraud, finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, tax evasion or receiving stolen property;
- (2) conviction of a criminal offense incidental to obtaining or attempting to obtain contracts or subcontracts or in the performance of a contract or subcontract;
- (3) conviction of a criminal offense under a Federal antitrust statute arising out of the submission of bids or proposals;

- (4) inclusion on the General Services Administration “Excluded Parties List System” (“EPLS”);
- (5) debarment or suspension by any state or local government entity;
- (6) commission of an unfair trade practice including, but not limited to, obtaining or using confidential or proprietary information of a competitor or the Airports Authority to obtain an Airports Authority contract or subcontract;
- (7) commission of any other offense indicating a lack of business integrity or honesty, including, but not limited to, offering bribes or kickbacks to Airports Authority employees or Board members to obtain business, making knowingly false representations or certifications to the Airports Authority, or engaging in any conduct that led to or induced an Airports Authority employee or Board member to violate the Airports Authority’s Codes of Ethics;
- (8) serious violation(s) of the terms of an Airports Authority contract or subcontract; such as violating any contract provisions relating to the Airports Authority’s Codes of Ethics, willful failure to perform in accordance with specifications or time limits provided in the contract; willful failure to pay monies owed under an Airports Authority concessions contract; a record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more Airports Authority contracts or subcontracts; including the DBE and LDBE provisions, or
- (9) any other cause that, in the discretion of the Airports Authority, is of a serious and compelling nature.

##### **9.5-89.5.2 Debarment of Contractor Affiliated or Connected with Another**

If an individual or contractor commits an impropriety that is cause for debarment, that impropriety may be imputed to any other contractor connected to or

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affiliated with the individual or contractor that committed the impropriety. Likewise, when a firm is involved in criminal, fraudulent or other improper conduct, any person who participated in, or any person affiliated with or connected to the firm who knew of or had reason to know of the impropriety, may be debarred.

### **9.5.99.5.3 Procedures for Debarment Determinations**

Upon receiving information that there may be cause for debarment of a contractor, the Executive Vice President may initiate debarment proceedings by providing to the contractor a written Notice of Proposed Debarment (“NPD”), sent to the contractor’s last known address by certified mail. The NPD will state that (i) debarment is being considered; (ii) the reasons for the proposed debarment; (iii) the anticipated period of debarment; and (iv) the proposed effective date. The NPD will also advise the contractor that it may, within fifteen (15) calendar days of the date of the NPD, submit, in writing, to the addressee set forth in the NPD, any information in opposition to the proposed debarment (“Opposition”).

- (1) If the contractor does not submit an Opposition within the time allowed, the debarment will become final with no further review by the Airports Authority.
- (2) If the contractor does submit an Opposition within the time allowed, debarment proceedings will continue in accordance with paragraphs 9.5.3.1 or 9.5.3.2, as appropriate.

#### **9.5.9.19.5.3.1 Debarment Proceedings Before the Executive Vice President**

If the reason(s) for the debarment is based exclusively on paragraphs 9.5.1(1)-(5), the Executive Vice President will determine whether to debar the contractor. The Executive Vice President will attempt to notify the contractor within seven (7) calendar days of receipt of the Opposition of when the Executive Vice President anticipates making a determination and will endeavor in all cases to make a determination promptly. However, the Executive Vice President has

discretion to request and consider additional information from the contractor, or other sources, prior to notifying the contractor of when a determination will be made and/or prior to making a determination.

- (1) If the Executive Vice President determines not to debar the contractor, the Executive Vice President shall provide a written determination to the contractor stating that the contractor shall not be debarred.
- (2) If the Executive Vice President determines to debar the contractor, the Executive Vice President shall prepare and provide to the contractor via certified mail a written Determination to Debar (“DTD”) stating that (i) the contractor has been debarred as of the date of the determination; (ii) the period of debarment; (iii) the reasons for the debarment; and (iv) the facts found by the Vice President. The DTD will also advise the contractor that it may, but is not required to, appeal the decision to the President and Chief Executive Officer of the Airports Authority by submitting a written notice of appeal within fifteen (15) calendar days of the date of the DTD.
- (3) If the contractor does not submit a notice of appeal within the 15 day period set forth above, the debarment is final.

#### **9.5.9.29.5.3.2 Debarment Proceedings Before the Airports Authority Debarment Judge**

When the reason(s) for debarment is based in whole or in part on paragraphs 9.5.1(6)-(9), or when the proposed debarment is based in whole or in part upon an affiliation or connection as set forth in paragraph 9.5.2, the Executive Vice President will provide the NPD and Opposition to the Office of General Counsel. The Executive Vice President and the General Counsel shall decide whether the debarment should proceed. If the determination is made to proceed, the Office of General Counsel shall provide the NPD and Opposition to an Airports Authority Debarment Judge (“ADJ”). The ADJ will determine whether to debar the contractor.

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- (1) The ADJ shall develop procedures for the submission of written evidence, a hearing before the ADJ with witnesses on the record, or other procedures as appropriate under the circumstances. These procedures will be communicated in writing via certified mail to the contractor. Under these procedures, the cause(s) for debarment must be established by the Airports Authority by a preponderance of the evidence.
- (2) Following these procedures, the ADJ shall provide a written decision ("ADJD") to the contractor stating either that the ADJ has determined not to debar or that (i) the contractor has been debarred as of the date of the ADJD; (ii) the period of debarment; (iii) the reasons for the debarment; and (iv) the facts found by the ADJ. The ADJD will also advise the contractor that it may, but is not required to, appeal the decision to the President and Chief Executive Officer of the Airports Authority by submitting a written notice of appeal within fifteen (15) calendar days of the date of the ADJD.
- (3) If the contractor does not submit a notice of appeal within the 15 day period set forth above, the debarment is final.

#### ~~9.5.10~~ **9.5.4 Airports Authority Review of a Debarment Determination**

If the contractor submits a notice of appeal of a DTD or ADJD, the President and Chief Executive Officer shall within fifteen (15) days of receipt of the notice send to the contractor by certified mail a written Notice of Appeal Procedures stating that the contractor may, within fifteen (15) calendar days of the date of this notice, submit in writing, any information in opposition to the DTD or ADJD.

- (1) If the contractor does not submit such information within the time allowed, the debarment will become final with no further review.

- (2) If the contractor does submit such information within the time allowed, the President and Chief Executive Officer shall review the record of the Airports Authority debarment proceedings, may request additional information from the contractor and/or other sources, and shall make a final debarment determination regarding debarment including the duration thereof. The President and CEO shall issue his decision within 30 calendar days of the receipt of the contractor's information.

### **9.6 SUSPENSION**

The Executive Vice President may, in the interest of the Airports Authority, immediately suspend a contractor upon receiving information that there may be cause for debarment of a contractor for any of the causes listed in paragraph 9.5.1 and/or 9.5.2. The suspension will generally continue until the completion of debarment proceedings, unless the Vice President determines that a lesser period is appropriate in the circumstances.

The existence of a cause for debarment does not necessarily require that the contractor be suspended. The Airports Authority will consider the seriousness of the contractor's acts or omissions and may, but is not required to, consider mitigating factors.

#### ~~9.6.79~~ **9.6.1 Procedures for Suspension**

The Executive Vice President may suspend a contractor prior to providing notice of suspension to the contractor. The Executive Vice President, however, will as soon as practicable notify a contractor of the suspension by providing written notice to the last known address of the contractor by certified mail no later than ten (10) calendar days after the effective date of the suspension and will state that (i) the contractor has been suspended; (ii) the reasons for the suspension; (iii) the effective date of the suspension; and (iv) that the suspension shall remain in effect until the completion of debarment proceedings, which are to be initiated as soon as practicable after the suspension begins, unless the Executive Vice President determines that a lesser period of suspension is appropriate in the

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circumstances. The notice of suspension will also advise the contractor that it may, within fifteen (15) calendar days of the notice, submit, in writing, any information in opposition to the suspension.

The Executive Vice President will consider the information submitted by the contractor and decide, in his discretion, whether to revoke the suspension or to continue the suspension pending completion of the debarment proceedings. The Executive Vice President will provide written notice to the contractor of his determination.

### **9.7 CONSEQUENCES OF DEBARMENT OR SUSPENSION**

Contractors that have been suspended or debarred by the Airports Authority are excluded from receiving Airports Authority contracts or subcontracts. Airports Authority contracting officers will not solicit proposals or quotations from, award contracts to, or, when a contract provides for such consent, consent to subcontracts with such contractors, unless the Vice President has approved the action as in the best interest of the Airports Authority.

### **9.8 LISTS OF PARTIES DEBARRED OR SUSPENDED**

The Airports Authority will maintain a list of contractors suspended or debarred and the current period of suspension or debarment.



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## **10 FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS**

Chapter 10 presents the policies and procedures applicable to Airports Authority procurements funded, in whole or in part, with Federal assistance provided by the Federal Transit Administration (FTA). Many of these policies and procedures are based upon procurement requirements established by the FTA or other Federal agencies, which are largely found in FTA Circular 4220.1F; other policies and procedures are incorporated from Chapters 1 through 5 and 7 through 9 of this Contracting Manual.

The Federal Transit Administration is one of ten modal administrations within the U.S. Department of Transportation (DOT) and provides grants and other types of financial assistance to public transportation agencies throughout the United States.

The FTA provides financial assistance to develop new public transportation systems and to improve, maintain, and operate existing systems. The FTA oversees thousands of federally assisted projects to hundreds of State and local public transportation providers, primarily through its ten regional offices. Each recipient of FTA assistance is responsible for managing its programs and projects in compliance with applicable Federal requirements, including those applicable to procurements, and the FTA is responsible for ensuring that recipients use that assistance prudently and in compliance with those requirements. While some of the requirements imposed on recipients in the area of procurements come from FTA's enabling legislation, other requirements come from government-wide Federal grant requirements that seek to ensure fair and economical procurements when Federal assistance is expended. (FTA C 4220.1F, Ch. I, paras. 1 and 4)

The Airports Authority is receiving FTA financial assistance for the first phase of the Dulles Corridor Metrorail Project (Project), and may receive further FTA assistance, or assistance from the Federal government, for the Project's second phase. This Chapter 10, therefore, is applicable to all procurements undertaken by the Airports Authority in connection with the Project's first phase and funded, in whole or in part, with FTA assistance. In addition, until it is determined that no FTA or other Federal financial assistance will be available for Project's second phase, this Chapter 10 will be applicable to Airports Authority procurements undertaken in connection with the Project's second phase.

The Airports Authority procurement requirements in Chapters 1 through 5 and Chapters 7 through 9 of this Manual will apply to procurements conducted under this Chapter 10, except to the extent such requirements conflict with requirements in this chapter, are expressly modified, replaced or superseded by provisions in this chapter, or are prohibited by the FTA's requirements.

### **10.1 DEFINITIONS**

The following terms shall be defined as stated for the purposes of Chapter 10. To the extent the definition of any term in this section conflicts with the term's definition elsewhere in this Manual, the definition in this section shall, for purposes of Chapter 10, control.

#### **~~10.1.7~~10.1.1 Advance Payments**

Advance payments are payments made to a contractor before the contractor incurs contract costs. [FTA C 4220.1F, Ch. IV, para. 2.b(5)(b)]

### **~~10.1.8~~10.1.2 Best Practices Procurement Manual (BPPM)**

The FTA's "Best Practices Procurement Manual" or "BPPM" provides suggested procedures, methods, and examples to advise a recipient how it might conduct its third party procurements in compliance with Federal laws and regulations and FTA Circular 4220.1F guidance. Although the BPPM can be a good resource for use in conducting FTA assisted procurements, it is not the source of FTA or

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Federal requirements and, as such, is not binding on FTA recipients. [FTA C 4220.1F, Ch. I, para. 6.g]

### ~~10.1.9~~**10.1.3 Best Value**

Best Value, as defined by the FTA, describes a competitive proposals procurement process in which the Airports Authority reserves the right to select the most advantageous offer by evaluating and comparing factors in addition to cost or price (e.g., qualifications of the offeror and its proposed personnel, and technical designs and approaches), such that the Airports Authority may acquire technical superiority even if it must pay a premium price. A “premium” is the difference between the price of the lowest priced proposal and the one that the Airports Authority believes offers the best value. Best Value also means the expected outcome of an acquisition that, in the Airports Authority’s estimation, provides the greatest overall benefit in response to its material requirements. To achieve best value in the context of acquisitions for public transportation purposes, the evaluation factors for a specific procurement are to reflect the subject matter and the elements that are most important to the Airports Authority. While FTA does not mandate any specific evaluation factors, the Airports Authority will disclose those factors in its solicitation. Evaluation factors may include, but are not limited to, qualifications of the offeror and its proposed personnel, technical design, technical approach, length of delivery schedules, past performance, and management plan. This definition does not limit or dictate the qualitative measures that the Airports Authority may employ in a Best Value competitive proposals procurement, except that they must support the purposes of the Federal public transportation program. [FTA C 4220.1F, Ch. I, para. 5.b]

### ~~10.1.10~~**10.1.4 Cardinal Change**

Cardinal Change means a major deviation from the original purpose of the work covered by a contract or the intended method of achievement, or a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract. [FTA C 4220.1F, Ch. I, para. 5.c]

### ~~10.1.14~~**10.1.5 Common Grant Rule**

Common Grant Rule refers to the U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” in 49 CFR Part 18, which apply to Federal grants and cooperative agreements made by the DOT to governmental recipients of Federal assistance. [FTA C 4220.1F, Ch. I, para. 5.e(1)]

### ~~10.1.12~~**10.1.6 FTA**

FTA means the Federal Transit Administration. [FTA C 4220.1F, Ch. I, para. 5.m]

### ~~10.1.13~~**10.1.7 Federally Required Clauses**

Solely because of the receipt of Federal funds by the Airports Authority, certain clauses containing Federal requirements are required to be included in Third Party Contracts. The Airports Authority will include appropriate clauses in each Third Party Contract stating the contractor's responsibility under Federal law, regulation, or directive, including any necessary provisions requiring the contractor to extend applicable Federal requirements to its subcontractors to the lowest tier necessary.

Many of the required clauses come directly from various sections of the Code of Federal Regulations (CFR) which are published by various executive departments of the Federal government. The most common clauses come from various parts of Title 49 of the CFR, published by the Department of Transportation. Requirements of the Department of Labor (such as Davis-Bacon Act clauses) originate as specific language in Title 29 of the CFR. Where clauses are not mandated by an executive department, they are frequently modeled after clauses in the Federal Acquisition Regulations (FAR) which are applicable to those executive departments. [BPPM, Section 8.1.1]

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#### ~~40.1.14~~**10.1.8 Full and Open Competition**

Full and Open Competition means that all responsible sources are permitted to compete. [FTA C 4220.1F, Ch. I, para. 5.n]

#### ~~40.1.15~~**10.1.9 Local Government**

Local Government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government. This term does not include a local public institution of higher education. The Airports Authority is considered the recipient of FTA grants for the Dulles Corridor Rail Project. [FTA C 4220.1F, Ch. I, para. 5.s]

#### ~~40.1.16~~**10.1.10 Master Agreement**

Master Agreement means the FTA document incorporated by reference and made part of FTA's standard grant agreements and cooperative agreements that contains the standard terms and conditions governing the administration of a project supported with Federal assistance awarded by the FTA. The Airports Authority has executed an FTA Master Agreement in connection with the first phase of the Dulles Corridor Metrorail Project. [FTA C 4220.1F, Ch. I, para. 5.t]

#### ~~40.1.17~~**10.1.11 Progress Payments**

Progress Payments are payments for contract work that has not been completed. [FTA C 4220.1 F, Ch. IV, para. 2.b(5)(c)]

#### ~~40.1.18~~**10.1.12 Recipient**

Recipient means the public or private entity to which FTA awards Federal assistance through a grant, cooperative agreement, or other agreement. The Recipient is the entire legal entity even if only a particular component of the entity is designated in the document through which the FTA has awarded Federal assistance. The term includes "grantee," which is a "recipient" of Federal grant assistance. The Airports Authority is a Recipient by virtue of the FTA financial assistance it has received for the first phase of the Dulles Corridor Metrorail Project.

Recipient also includes any entity to which the Airports Authority has given, by grant or similar means, a portion of its FTA financial assistance. The Airports Authority is responsible for assuring that each such subrecipient complies with the applicable requirements and standards of FTA Circular 4220.1F (see Paragraph 10.2.1), and is aware of the Federal statutory and regulatory requirements that apply to its actions as a subrecipient.

Neither a party which contracts with the Airports Authority, nor an entity which contracts with that party is a Recipient for purposes of this Chapter or Circular 4220.1F. [FTA C 4220.1F, Ch. I, para. 5.z]

#### ~~40.1.19~~**10.1.13 Revenue Contract**

Revenue Contract means a contract in which the Airports Authority or a subrecipient provides access to the Dulles Corridor Metrorail Project or other public transportation assets constructed with FTA financial assistance for the primary purpose of either producing revenues in connection with a public transportation related activity, or creating business opportunities involving the use of FTA assisted property. Airports Authority revenue contracts (known as Concession Contracts) are addressed in Chapter 6 of this Manual. [FTA C 4220.1F, Ch. I, para. 5.aa]

#### ~~40.1.20~~**10.1.14 State or Local Government Purchasing**

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## **Schedule or Purchasing Contract**

State or Local Government Purchasing Schedule or Purchasing Contract means an arrangement that a State or Local Government has established with multiple vendors in which those vendors agree to provide essentially an option to the State or Local Government, and its subordinate government entities and others it might include in its programs, to acquire specific property or services in the future at established prices. These arrangements are somewhat similar to the GSA's Cooperative Purchasing Program available for Federal Government use. [FTA C 4220.1F, Ch. I, para. 5.cc]

### **~~10.1.2~~10.1.15 Third Party Contract**

Third Party Contract refers to a contract between the Airports Authority and a vendor or contractor which is financed, in whole or in part, with Federal assistance awarded by the FTA, including procurements by purchase order or purchase by credit card; it does not include any subcontract between that vendor or contractor and another party. [FTA C 4220.1F, Ch. I, para. 5.dd]

## **10.2 APPLICABILITY OF FEDERAL, STATE AND LOCAL PROCUREMENT LAWS, REGULATIONS AND GUIDANCE DOCUMENTS**

### **~~10.2.7~~10.2.1 FTA Circular 4220.1F**

This Chapter 10 is based in substantial part on FTA Circular 4220.1F. This Circular provides suggested procedures, methods, and examples to advise Recipients and their subrecipients in complying with Federal laws and regulations that affect their FTA-assisted procurements. The FTA considers this Circular, in its entirety, to be a guidance document. While this guidance itself does not have the force and effect of Federal law or regulation, it does contain information about Federal laws and regulations which are mandatory when applicable.

As guidance, the Circular attempts to describe how a Recipient or subrecipient of FTA assistance can comply with those Federal laws and regulations that affect procurements. In some cases, the Circular describes the single method by which a Recipient or subrecipient can comply with a specific Federal statutory or regulatory mandatory requirement. In other cases, the Circular provides more flexibility. As guidance, this Circular also expresses FTA's preferences about how the procurements it supports should be undertaken. The Master Agreement reflects the agreement between the FTA and the Recipient that the Circular will apply to its Third Party Contracts. As a guidance document, the Circular does not waive any requirements of the Federal statutes or regulations it states and describes except as permitted by their terms.

Because the Circular is guidance, the FTA is willing to consider methods of compliance with Federal laws and regulations other than those described in the Circular. Prior to undertaking an alternative method of complying with any applicable Federal statute or regulation other than those described in the BPPM, the Airports Authority will, when feasible, contact the FTA before employing that method to ensure that the FTA agrees with the alternative proposed. While FTA's prior concurrence is not required, FTA reserves the right to decline to financially participate in the costs of Third Party Contracts that fail to comply with applicable Federal laws and regulations, or the terms of the Recipient's underlying grant or cooperative agreement. [FTA C 4220.1F, Ch. II, para. 1]

### **~~10.2.8~~10.2.2 Scope of Circular 4220.1F**

The Circular applies to Third Party Contracts and subcontracts issued by Recipients, and therefore by the Airports Authority, where FTA funding is involved. [FTA C 4220.1F, Ch. II, para. 2.a(1)(b)]

Airports Authority contractors and subcontractors are not considered Recipients or subrecipients of FTA funding under the Circular. Consequently, Airports Authority contractors and subcontractors are not directly covered by the Circular, or by the Common Grant Rule, or the FTA's "Best Practices Procurement

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Manual” (BPPM) in awarding their subcontracts. However, each Airports Authority contractor is required to comply with the terms and requirements of its contract with the Airports Authority, including the requirement to extend the applicable Federal Required Clauses to its subcontractors and to require each of those subcontractors to do the same to the lowest tier of subcontracts. For that reason, the Circular, the Common Grant Rule, and the BPPM provide useful information to a third party contractor and third party subcontractor about the constraints applicable to a Recipient when entering into a Third Party Contract. [FTA C 4220.1F, Ch. II, para. 2.a(5)]

### ~~10.2.9.1~~ **10.2.3 Federal Laws and Regulations**

In addition to Circular 4220.1F, this Chapter 10 is based on Federal laws and regulations including, but not limited to, Federal transit laws at 49 U.S.C. Chapter 53, FTA regulations, and other Federal laws and regulations that contain requirements applicable to Recipients, and therefore the Airports Authority, and their FTA assisted procurements. These include the following Federal regulations. [FTA C 4220.1 F, Ch. II. Para. 3]

#### ~~10.2.9.1~~ **10.2.3.1 Common Grant Rule**

The Common Grant Rule contains the most comprehensive Federal requirements applicable to Recipients, including the Airports Authority. [FTA C 4220.1F, Ch. II, para. 3.a(1)]

#### ~~10.2.9.2~~ **10.2.3.2 Federal Acquisition Regulation (FAR)**

The Federal Acquisition Regulation (FAR), 48 CFR Chapter 1, does not apply to Recipients, and therefore to the Airports Authority, or their Federally assisted procurements, absent Federal laws or regulations to the contrary. However, audits of Architectural and Engineering (A&E) services listed in 49 U.S.C. Section 5325, which are provided to Recipients, must be carried out under FAR Part 31 cost principles. [FTA C 4220.1F, Ch. II, para. 3.b]

#### ~~10.2.9.3~~ **10.2.3.3 Other Federal Requirements**

Other Federal transit laws and implementing regulations not addressed in the Common Grant Rule, contain requirements that apply to Recipients, and therefore to the Airports Authority, as do other Federal cross cutting statutes and regulations that affect what a Recipient may acquire.

Citations to most of these Federal requirements are included in the latest edition of the Master Agreement, typically issued at the beginning of each Federal fiscal year, which includes comprehensive information about Federal laws and regulations that may apply to an FTA assisted project. Airports Authority Contracting Officers in FTA assisted procurements will review the Master Agreement when making procurement decisions. [FTA C 4220.1F, Ch. II, para. 3.c]

### ~~10.2.10.1~~ **10.2.4 State and Local Laws and Regulations**

The Airports Authority, as authorized by the Interstate Compact between the Commonwealth of Virginia and the District of Columbia creating the Airports Authority, has established its own procurement procedures, which are set out in this Manual. Procurement laws and regulations of the Commonwealth of Virginia and the District of Columbia are inapplicable to the Airports Authority. [FTA C 4220.1F, Ch. II, para. 4]

## **10.3 AIRPORTS AUTHORITY RESPONSIBILITIES**

The following procurement-related responsibilities arise from the Common Grant Rule and other applicable Federal laws and regulations.

### ~~10.3.7.1~~ **10.3.1 Written Standards of Conduct**

#### ~~10.3.7.1~~ **10.3.1.1 Policy.**

The Airports Authority expects all employees to act in the best interests of the Airports Authority at all times and to not knowingly engage in conduct that is illegal, dishonest, a conflict of interest or that brings discredit upon the Airports Authority. In particular, those



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employees who obligate the Airports Authority to spend money, approve payments, and make decisions affecting disbursements have a special duty to make their recommendations and decisions without prejudice, seeking to obtain the maximum value for the Airports Authority.

No officer, employee, agent, immediate family member or Board member of the Airports Authority will participate in the selection, award or administration of a contract supported by FTA assistance if a conflict of interest, real or apparent, would be involved. The Airports Authority defines such a conflict to occur when any of the following has a financial or other interest in the firm selected for award:

- (1) An Airports Authority officer, employee, agent or Board member,
- (2) Any member of his/her immediate family,
- (3) His/her partner, or
- (4) An organization that employees, or is about to employee, any of the above.

The Airports Authority's Code of Ethics for Employees and Code of Ethical Responsibilities for Members of the Board of Directors, which are both available on the Airports Authority's website, [www.mwaa.com](http://www.mwaa.com), are hereby incorporated into the Manual, providing additional detail as to the Airports Authority's standards of conduct. Section 1.11, herein, entitled *Standards of Conduct*, provides additional information.

#### ~~10.3.7.2~~10.3.1.2 Gifts.

Gift means any payment, merchandise, gratuity, favor, discount, entertainment, hospitality, loan forbearance, anything having monetary value for which the recipient does not pay fair market value, rendering or deposit of money which is transferred to a donee directly or indirectly or held in trust for his/her benefit, or by any other means. The term includes, but is not limited to, gifts of services, training, transportation, tickets, lodging, and meals, whether provided in kind, by

purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

Officers, employees, agents or Board members will neither solicit nor accept solicit a gift, regardless of its value, when to do so reasonably creates the appearance of a conflict of interest or of influencing him or her in the performance of official duties.

Except as provided below, no officer, employee, agent or Board member may accept a gift of more than nominal value, established here at \$25.00, from anyone doing business or seeking to do business with the Airports Authority or from a subordinate in the line of authority.

An officer, employee, agent or Board member may accept a gift, regardless of value, when

- (1) The gift is from an immediate family member and does not have the appearance of influencing the employee in the performance of his or her duties.
- (2) The gift is food or beverage offered in the ordinary course of conducting the Airports Authority's business or offered at a banquet, reception or other widely attended occasion.
- (3) The gift is offered at, or is participation in, a widely attended event (e.g., a golf tournament) sponsored by an industry organization (e.g., Air Transport Association) or a business doing business with the Airports Authority.
- (4) The gift is an award or prize given in contests or at widely attended events, including random drawings.
- (5) The gift is a ceremonial one accepted on behalf of the Authority.
- (6) The gift is an upgrade of service from an air carrier (i) offered in the ordinary course of the carrier's business and not based on the employee's status as an employee of the Authority, (ii) offered by the carrier to the employee on travel for business with that carrier,

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or (iii) otherwise permitted under this paragraph. An employee may not solicit an upgrade.

- (7) Acceptance is approved by the President or the Executive Vice President.

An employee should not accept gifts, even of nominal value, from a business doing business or seeking to do business with the Authority on a regular or frequent basis since this would have the appearance of influencing him or her. [FTA C 4220.1F, Ch. III, para. 1]

### ~~10.3.8~~**10.3.2 Third Party Contracting Capacity**

As part of its obligation to maintain adequate technical capacity to carry out its FTA-assisted projects and comply with the Common Grant Rule, the Airports Authority's third party contracting capability is to be adequate to undertake its procurements effectively and efficiently in compliance with applicable Federal, State, and local requirements. The Airports Authority also is to maintain a contract administration system to ensure that it and its third party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, State and local requirements. [FTA C 4220.1F, Ch. II, para. 3]

## **10.4 WRITTEN PROCUREMENT PROCEDURES**

The Airports Authority is to maintain written procurement procedures as a condition of its self-certification that its procurement system complies with FTA requirements and that it has the technical capacity to comply with Federal procurement requirements. These procedures are set out below in Paragraphs 10.4.1 through 10.4.11, and elsewhere in this Chapter 10, as supplemented by applicable provisions in Chapters 1 through 5 and 7 through 9 of this Manual. [FTA C 4220.1F, Ch. III, para. 3.a]

### ~~10.4.7~~**10.4.1 Specifications**

Clear Descriptions. A clear and accurate description of the technical requirements for the material, product, or service to be procured will be provided.

Nonrestrictive Specifications. In competitive procurements, the description will not contain features that unduly restrict competition and will not be exclusionary or discriminatory.

Quality Requirements. A description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, describe minimum essential characteristics and standards to which the property or services must conform if it is to satisfy its intended use.

Preference for Performance Specifications. As provided in the Common Grant Rule, "detailed product specifications will be avoided "if at all possible" and, whenever practicable, performance specifications will be utilized.

Brand Name or Equal. When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the material, product, or services to be acquired, a "brand name or equal" description may be used to define the performance or other salient characteristics of the property or services sought. The specific features or salient characteristics of the named brand which must be met by offerors of "an equal" proposal will be clearly stated. [FTA C 4220.1F, Ch. III, para. 3.a(1)]

### ~~10.4.8~~**10.4.2 Necessity**

The Contracting Officer will ensure that the office requesting a procurement justifies its purchasing requirements in order to avoid the purchase of material, property, and services the office does not need (including duplicative items and quantities or options it does not intend to use or whose use is unlikely). In reviewing a given justification, the Contracting Officer will consider whether the office's requirements reflect a reasonable expectation of requirements at the time a contract will be entered.

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(1) Unnecessary Reserves. The Contracting Officer will ensure that the Airports Authority limits its acquisition of material, product, and services to the amount it needs to support the Dulles Corridor Metrorail Project or other FTA-assisted project.

(2) Acquisition for Assignment Purposes. The Airports Authority will contract only for its current and reasonably expected needs and may not add quantities or options to its contracts solely to permit assignment to another party at a later date.

[FTA C 4220.1F, Ch. III, para. 3.a(2) and Ch. VI, para. 2.a(2)]

#### ~~10.4.9~~10.4.3 **Lease Versus Purchase**

To obtain the best value, the Contracting Officer will review lease versus purchase alternatives for acquiring property and, if necessary, should obtain an analysis to determine the more economical alternative. The Airports Authority may use FTA capital assistance to finance the costs of leasing eligible property if leasing is more cost effective than full ownership. Before the Airports Authority leases an asset, it will, as required by FTA regulations ("Capital Leases," 49 CFR Part 639, Subpart C), undertake a written comparison of the cost of leasing the asset and the cost of purchasing or constructing the asset and will ensure that the comparison utilizes costs that are reasonable, based on realistic current market conditions and on the expected useful service life of the asset. [FTA C 4220.1F, Ch. III, para. 3.a(3) and Ch. IV, para. 1.e]

#### ~~10.4.10~~10.4.4 **Metric Usage**

The Airports Authority will accept material, products, and services with dimensions expressed in metric measurements, to the extent practicable and feasible. [FTA C 4220.1F, Ch. III, para. 3.a(4)]

#### ~~10.4.11~~10.4.5 **Environmental and Energy Efficiency Preferences**

The Airports Authority will comply with applicable Federal environmental requirements and implement

them as necessary through Third Party Contracts. The Contracting Officer will include the applicable contract provisions in Appendix L to facilitate compliance with environmental mitigation measures it has agreed to implement. [FTA C 4220.1F, Ch. III, para. 3.a(5)]

#### ~~10.4.12~~10.4.6 **Procurement Methods**

In undertaking procurements that are subject to this Chapter 10, the Airports Authority will utilize the following procurement methods.

##### ~~10.4.12.1~~10.4.6.1 **Micro-Purchases**

Micro-purchases are purchases of \$3,000 or less. The Airports Authority may acquire property and services valued at \$3,000 or less without obtaining competitive quotations. These purchases are exempt from FTA's Buy America requirements. Davis-Bacon prevailing wage requirements, however, apply to construction contracts exceeding \$2,000, even when using micro-purchase procurement procedures. The Contracting officer will distribute micro-purchases equitably among qualified suppliers and will not divide or reduce the size of a procurement merely to come within the micro-purchase limit. The only documentation required for a micro-purchase is the determination that the price is fair and reasonable and the description of how that determination was made. [FTA C 4220.1F, Ch. VI, para. 3.a]

##### ~~10.4.12.2~~10.4.6.2 **Small Purchases**

Small purchases are purchases valued at more than the micro-purchase threshold but less than the Federal simplified acquisition threshold (as of July 2011, \$100,000). The Airports Authority will use relatively simple and informal procedures to make small purchases, but these procedures will require the Contracting Officer to obtain price or rate quotations from an adequate number of qualified sources. The Contracting Officer may not divide or reduce the size of the procurement to avoid the additional procurement requirements applicable to larger acquisitions. The Airports Authority's small-purchase procedures are set out in the Airport Purchasing Policies and Procedures Manual referenced in Paragraph 2.12 of this Manual .

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Small-purchases are exempt from FTA's Buy America requirements. [FTA C 4220.1F, Ch. VI, para. 3.b]

~~10.4.12.3~~ 10.4.6.3      Sealed Bids (Formal Advertising: Invitation for Bids)

A preference is stated in the Common Grant Rule for the sealed bids procurement method for acquiring property, construction, and other services. Procurement using sealed bids will be used when all of the following circumstances are present:

- (1) A complete, adequate, precise, and realistic specification or purchase description is available for the procurement.
- (2) Two or more responsible bidders are willing and able to compete effectively for the business.
- (3) The procurement generally lends itself to a firm fixed price contract.
- (4) The risk of unsuccessful contract performance is minimal and successful execution of the project is not highly dependent upon the successful bidder's quality of proposed personnel, past performance, management plan, or technical approaches.
- (5) The successful bidder can be selected on the basis of price and the price-related factors listed in the solicitation, which may include transportation costs, life cycle costs, and discounts expected to be taken. (When this procurement method is utilized, apart from responsibility determinations, contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award.)
- (6) Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone. (When this procurement method is utilized, a pre-bid conference with prospective bidders before bids have been received may be used.)

The procurement procedures applicable to sealed bids procurements in Chapter 2 of this Manual will apply to sealed bids procurements under this Chapter 10, and those procedures will be supplemented by the following provisions; provided, that, to the extent there is a conflict between any of the following provisions and the procedures in Chapter 2, the following provisions will control:

- (1) The invitation for bids will be publicly advertised.
- (2) Bids will be solicited from an adequate number of known suppliers.
- (3) The invitation for bids, including any specifications and pertinent attachments, will describe the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.
- (4) Bidders will be allowed sufficient time to prepare bids before the date of bid opening.
- (5) All bids will be publicly opened at the time and place prescribed in the invitation for bids.
- (6) A firm fixed price contract will be awarded in writing to the lowest responsive and responsible bidder, but a fixed price incentive contract or inclusion of an economic price adjustment provision may sometimes be appropriate. When specified in the bidding documents, factors such as transportation costs and life cycle costs may affect the determination of the lowest bid. Payment discounts will be used to determine the low bid only when prior experience indicates that such discounts are typically taken.
- (7) Any or all bids may be rejected if there is a sound, documented business reason.

[FTA C 4220.1F, Ch. VI, para. 3.c]

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~~10.4.12.4~~10.4.6.4 Competitive Proposals  
(Request for Proposals: Negotiated  
Procurements)

The Common Grant Rule allows the use of competitive proposals when the nature of the procurement does not lend itself to sealed bidding and the procuring entity expects that more than one source will be willing and able to submit an offer or proposal. Generally, the Airports Authority will utilize this procurement method when any of the following circumstances are present:

- (1) **Type of Specifications.** The material, products, or services to be acquired are described in a performance or functional specification or, if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing contract award on factors other than price alone are present.
- (2) **Uncertain Number of Sources.** Uncertainty exists about whether more than one bid will be submitted in response to an invitation for bids and the Airports Authority lacks the ability under this Manual to negotiate the contract price were it to receive only a single bid.
- (3) **Price Alone Not Determinative.** Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors. In different types of competitive proposals procurements, the relative importance of cost or price may vary. When the Airports Authority's material requirements are clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. However, the less definitive the requirements, the more development work required, or the greater the performance risk, the more technical and past performance considerations may play a dominant role in source selection and supersede low price.
- (4) **Discussions Expected.** Separate discussions with individual offeror(s) are expected to be necessary after proposals have been submitted.

The procurement procedures applicable to competitive proposal procurements in Chapter 2 of this Manual will apply to competitive proposal procurements under this Chapter 10, and those procedures in Chapter 2 will be supplemented by the following provisions; provided, that, in the event there is a conflict between any of the following provisions and the procedures in Chapter 2, the following provisions will control:

- (1) **Publicity.** The request for proposals will be publicly advertised.
- (2) **Evaluation Factors.** All evaluation factors and their relative importance will be specified in the solicitation, and numerical or percentage ratings or weights may but need not be disclosed.
- (3) **Adequate Sources.** Proposals will be solicited from an adequate number of qualified sources.
- (4) **Evaluation Method.** A specific method will be established and used to conduct evaluations of the technical proposals and, when applicable, of the qualifications of the offerors and their proposed personnel, and to determine the most qualified offeror.
- (5) **Price and Other Factors.** An award will be made to the responsible offeror whose proposal is most advantageous to the Airports Authority's program with price and other factors considered.
- (6) **Best Value.** An award may be made to the offeror whose proposal provides the greatest value to the Airports Authority. (See definition of Best Value.) In this case, the solicitation must inform potential offerors that the award will be made on a "Best Value" basis and identify the evaluation factors that will form the basis for award. The evaluation factors for a specific procurement will reflect the subject matter and the elements of the procurement that are most important to the Airports Authority. Those evaluation factors may include, but are not limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management



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plan. The determination of which proposal represents the “Best Value” will be based on an analysis of the tradeoff of qualitative technical factors and price or cost factors.

[FTA C 4220.1F, Ch. VI, para. 3.d]

~~10.4.12.5~~ 10.4.6.5 Two-Step Procurement Procedures

The FTA guidelines provide for the use of a two-step procurement procedure in connection with the sealed bids and competitive proposals procurement methods, the construction component of the design-bid-build procurement method (see Paragraph 10.4.6.7. below) and the design-build procurement method when construction costs are predominant (see Paragraph 10.4.6.8. below), provided the opportunity for Full and Open Competition is retained.

The Airports Authority has authority to use the two-step procurement processes identified in Paragraph 2.7.5 of this Manual, “Design-Build Contracts,” and Paragraph 2.8.5, “Two-Step Advertised Sealed Bids.” These processes are compliant with the FTA Guidelines on two-step procurement procedures.

[FTA C 4220.1F, Ch. VI, para. 3.e]

~~10.4.12.6~~ 10.4.6.6 Architectural and Engineering (A & E) Services

Federal law requires Recipients to use qualifications-based procurement procedures contained in the “Brooks Act” to acquire architectural and engineering (A & E) services and, in addition, program management, construction management, preliminary engineering, design, architectural, engineering, surveying, mapping and related services, as well as feasibility studies. It is the nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, that determines whether qualifications-based procurement procedures are to be used. Services that are directly in support of, directly connected to, directly related to, or lead directly to the construction, alteration or repair of real property are to be acquired through qualifications-based procedures; all other services are not to be acquired through such procedures.

Qualifications-Based Procurement Procedures Required and Prohibited. The Airports Authority will use qualifications-based procurement procedures when acquiring not only A&E services, but also other services that are directly in support of, directly connected or related to, or lead directly to construction, alteration, or repair of real property. Unless the FTA determines otherwise in writing, the Airports Authority will not use qualifications-based procurement procedures to acquire any other types of services and will not utilize any contractor for such other types of services who has been selected through qualifications-based procurement procedures. Whether or not qualifications-based procurement procedures will, or will not, be used in the acquisition of services on, or related to, a construction project depends on the actual services to be performed and their connection with the project. For example, the design or fabrication of message signs, signals, movable barriers, and similar property that will become off-the-shelf items or will be fabricated and delivered as final end products for installation in a construction project are not services for which qualifications-based procurement procedures may be used. Nor are services involving the actual construction of, alteration or repair of real property.

Qualifications-Based Procurement Procedures. The qualifications-based procurement procedures set out in Paragraph 2.6 of this Manual will apply to the procurement of services under this Paragraph 10.4.6.6, and those procedures will be supplemented by the following provisions; provided, that, in the event there is a conflict between any of the following provisions and a provision in Paragraphs 2.6, the following provisions will control:

- (1) Only an offeror’s qualifications to provide the services will be evaluated to determine contract award.
- (2) Price will be excluded as an evaluation factor.
- (3) Negotiations regarding price will first be conducted with the most qualified offeror. Only after failing to agree on a fair and reasonable price with that offeror may negotiations be conducted with the next most qualified offeror.

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- (4) Serial Price Negotiations. If necessary, negotiations with successive offerors in descending order may be conducted until contract award can be made to the offeror whose price the recipient believes is fair and reasonable.

Audits and Indirect Costs. The following Federal requirements apply to any Third Party Contract that is subject to this Paragraph 10.4.6.6:

- (1) The contract or subcontract must be performed and audited in compliance with cost principles in FAR Part 31.
- (2) The Airports Authority and the contractor, its subcontractors and subrecipients, if any, will accept FAR indirect cost rates for one-year applicable accounting periods established by a cognizant Federal or State government agency, if those rates are not currently under dispute.
- (3) After a firm's indirect cost rates established as described in subparagraph (2) above are accepted, those rates will apply for purposes of contract estimation, negotiation, administration, reporting, and payments.
- (4) Before requesting or using cost or rate data described in subparagraph (2) above, the Airports Authority will notify the affected firm. Those data are to be kept confidential, and are not to be provided, by the group of agencies that share cost data, except by written permission of the audited firm. Moreover, if prohibited by law, the data may not be disclosed under any circumstances. Before requesting or using such data, the Airports Authority will notify the affected firm. It will also obtain the firm's permission before it provides the data in response to a valid request under the Airports Authority's Freedom of Information (FOI) policy. The confidentiality requirements of 49 U.S.C. 5325(b)(3)(D) cannot be waived, even if they conflict with State law or regulations.

[FTA C 4220.1F, Ch. VI, para. 3.f]

#### ~~10.4.12.7~~10.4.6.7 Design-Bid-Build

The design-bid-build procurement method requires separate contracts for design services and for construction. Under this procurement method:

- (1) For design services, the Airports Authority will use qualifications-based procurement procedures, as provided in Paragraph 10.4.6.6.
- (2) For construction, the Airports Authority will not use qualifications-based procurement procedures and instead will generally use competitive procedures which include the sealed bids or competitive proposals procurement methods set out above in Paragraphs 10.4.6.3 and 10.4.6.4, respectively, as well as the two-step procurement method set out in Paragraph 10.4.6.5.

[FTA C 4220.1F, Ch. VI, para. 3.g]

#### ~~10.4.12.8~~10.4.6.8 Design-Build

The design-build procurement method consists of contracting for design services and construction simultaneously with contract award to a single contractor (e.g., a corporation, limited liability company, consortium, or joint venture) that will be responsible both for the project's design and for its construction. In utilizing this procurement method in connection with projects to which this Chapter 10 applies, the Airports Authority will comply with the following requirements.

First, the Airports Authority will separate the various contract activities to be undertaken and classify them as design or construction, and then calculate the estimated total costs of the activities placed in each of the two categories.

Second, the Airports Authority will compare the estimated costs in each category.

- (1) If construction costs are predominant, unless FTA determines otherwise in writing, the Airports Authority will not use the qualifications-based procurement method to acquire any of the contract activities in the design category (e.g., architectural engineering,

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program management, construction management, preliminary engineering or design, architectural and engineering services) but will use a procurement method that is applicable to construction (see, e.g., Paragraph 10.4.6.7.(2)) for the acquisition of all design and construction contract activities.

- (2) In the less usual circumstance where the cost of contract activities in the design category are predominant, the Airports Authority will use the qualifications-based procurement method in Paragraph 10.4.6.6 for the acquisition of all design and construction contract activities.

Paragraph 2.7.5 of this Manual provides for the use of a two-step design-build procurement method. The procurement procedures applicable to this procurement method in Paragraphs 2.7.5 and 2.2.11 will apply to design-build procurements under this Chapter 10.

[FTA C 4220.1F, Ch. VI, para. 3.h]

#### ~~10.4.12.9~~ 10.4.6.9 Other Than Full and Open Competition

Normally, the Airports Authority will provide for Full and Open Competition when engaging in procurements to which this Chapter 10 applies. However, under certain circumstances, the Airports Authority may conduct such procurements without providing for such competition.

When Appropriate. The Airports Authority may procure with ~~lessother~~ than ~~Fullfull~~ and Open Competition when a procurement is inappropriate for the use of small purchases, sealed bids, or competitive proposals procurement methods, and at least one of the following circumstances is present:

- (1) Competition Adequate. Upon receiving a single bid or proposal in response to a solicitation, the Contracting Officer will determine whether competition was adequate. This will include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal. The Contracting Officer will also

review the specifications for changes that may be made to encourage submission of more bids or proposals. If the Contracting Officer determines that the specifications are not unduly restrictive and changes cannot be made to encourage greater competition, the Contracting Officer may determine the competition adequate, in which case a contract may be awarded to the firm submitting the single bid or proposal. Also in this case, a cost analysis will be performed in lieu of a price analysis.

The FTA regulations acknowledge that competition is adequate when the reasons for few responses are caused by conditions beyond the Recipient's control. If the competition can be determined adequate, FTA's competition requirements will be fulfilled. At the same time, the FTA regulations recognize that competition may be inadequate due to conditions within the Recipient's control, such as when specifications are unduly restrictive.

- (2) Sole Source. When the Airports Authority requires supplies or services that are available from only one responsible source, and no other supplies or services will satisfy its requirements, the Contracting Officer may make a sole source award. This may also occur when the Airports Authority needs to make a change to an existing contract that is beyond the scope of the contract in order to obtain supplies or services that are available only from that contractor.

In applying this paragraph (2), supplies or services will be considered to be available only from one source if any of the following conditions is present:

- (i) Unique or Innovative Concept. The source of the supplies or services demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and the concept, approach or method is available to

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the Airports Authority only from one source and has not in the past been available to the Airports Authority from another source.

(ii) Patents or Restricted Data Rights. Patent, intellectual property or data rights restrictions preclude competition.

(iii) In the case of a follow-on contract for the continued development or production of highly specialized equipment or major components thereof, it is likely that an award to another source would result in substantial duplication of costs that are not expected to be recovered through competition, or in unacceptable delays in fulfilling the Airports Authority's needs.

(3) Unusual and Compelling Urgency. The Airports Authority may limit the number of sources from which it solicits bids or proposals (i) when it has such an unusual and urgent need for the supplies or services in that the Airports Authority would be seriously injured unless it limited the solicitation or (ii) when a public exigency or emergency exists that will not permit the delay in obtaining the supplies or services that will result from a fully competitive solicitation.

(4) Authorized by FTA. The Common Grant Rule provides Federal agencies authority to permit Recipients to use ~~lessother~~ than ~~Fullfull~~ and Open Competition procurements. Under this authority, the FTA has authorized Recipients, including the Airports Authority, to use ~~lessother~~ than ~~Fullfull~~ and Open Competitive procurements in the following circumstances:

(a) To comply with Department of Transportation (DOT) appropriations laws which include specific statutory requirements, with the result that only a single contractor can perform certain project work.

(b) To maintain the availability of a facility, producer, manufacturer, or other supplier to provide supplies or services in the event of a national emergency or to achieve industrial mobilization.

(c) To acquire the services of an expert or neutral person for any current or anticipated protest, dispute, claim, or litigation.

(d) When competition is precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or is prohibited by the written directions of a foreign government reimbursing the Airports Authority for the cost of the acquisition of the supplies or services for that government.

(e) When the disclosure of the Airports Authority's needs would compromise national security.

(f) When the Airports Authority determines that Full and Open Competition in connection with a particular procurement is not in the public interest.

When Prohibited. ~~LessOther~~ than ~~Fullfull~~ and Open Competition is not justified based on:

- (1) The Airports Authority's lack of advance planning; or
- (2) Limited Availability of Federal Assistance. Concerns about the amount of Federal assistance available to support the procurement (e.g., expiration of Federal assistance previously available for award).

Procurement Procedures. When ~~lessother~~ than ~~Fullfull~~ and Open Competition is available, the Airports Authority will:

- (1) Solicit offers from as many potential sources as is practicable under the circumstances.
- (2) If the Contracting Officer decides to solicit an offer from only one source, the decision will be adequately justified in writing.
- (3) The Contracting Officer will prepare or obtain a cost analysis verifying the cost data proposed by

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the source and the projections of the data, and evaluating the source's costs and profits.

- (4) The Contracting Officer will submit the proposed procurement to FTA for pre-award review if FTA so requests.

[FTA C 4220.1F, Ch. VI, para. 3.i]

#### ~~10.4.13~~**10.4.7 Adequate Third Party Contract Provisions**

The Common Grant Rule requires that all Third Party Contracts include provisions adequate to form a sound and complete agreement. Compliance with Federal laws and regulations necessarily requires the addition of many other provisions to ensure compliance with those laws and regulations. Specific Federal contract provisions, directed at those laws and regulations, are required for each contract, as well as a provision requiring that the contractor extend the requirements of those laws and regulations to its subcontractors to the extent required. A matrix of clauses required in FTA-assisted Third Party Contracts is set out in Appendix K. Contracting Officers will use the matrix to identify required clauses and use the suggested or mandatory clause language in Appendix L. [FTA C 4220.1F, Ch. III, para. 3.b]

#### ~~10.4.14~~**10.4.8 Sources**

The Airports Authority is authorized to use many sources from which to acquire property and services whose procurement is subject to this Chapter 10 as described below:

##### ~~10.4.14.1~~**10.4.8.1 Force Account.**

"Force account" means the Airports Authority's own labor forces and equipment. The use of force account labor is a project management function, rather than a procurement and contract administration function. [FTA C 4220.1F, Ch. V, para. 1]

##### ~~10.4.14.2~~**10.4.8.2 Shared Use.**

The Common Grant Rule encourages Recipients and subrecipients to enter into agreements for shared use of property and services. [FTA C 4220.1F, Ch. V, para. 2]

##### ~~10.4.14.3~~**10.4.8.3 Joint Procurements.**

The FTA uses the term "joint procurement" to mean a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services in a fixed quantity, even if expressed as a total minimum and total maximum. The FTA encourages Recipients to procure property and services jointly with other Recipients or others to obtain better pricing through larger purchases. When obtaining goods or services in this manner, the Airports Authority will ensure compliance with all applicable FTA and Federal requirements and include all required clauses and certifications in the joint solicitation and contract documents. [FTA C 4220.1F, Ch. V, para. 3]

##### ~~10.4.14.4~~**10.4.8.4 State or Local Government**

Purchasing Schedules or Purchasing Contracts. The FTA encourages Recipients to use State and Local Governmental Purchasing Schedules and Purchasing Contracts (defined in Paragraph 10.1.14) for procurements of property or services. When obtaining property or services in this manner, the Airports Authority will ensure that all Federal requirements, required clauses, and certifications (including FTA's Buy America requirements) are properly followed and included, whether in the master intergovernmental contract or in the Airports Authority's purchase documents. [FTA C 4220.1F, Ch. V, para. 4]

##### ~~10.4.14.5~~**10.4.8.5 Federal Excess and Surplus Property.**

The Common Grant Rule encourages Recipients to use Federal excess and surplus property managed by the General Services Administration when feasible and economical rather than procuring new property. [FTA C 4220.1F, Ch. V, para. 5]

##### ~~10.4.14.6~~**10.4.8.6 Federal Supply Schedules.**

Recipients must be specifically authorized by Federal law before they may use a General Services Administration Federal Supply Schedule. Federal laws authorize State and Local Governments, including the Airports Authority, to use Federal Supply Schedules to



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acquire information technology (IT) and to purchase products and services to facilitate recovery from a major disaster. When using GSA schedules to acquire property or services in this manner, the Airports Authority will ensure that all Federal requirements, required clauses, and certifications (including FTA's Buy America requirements) are properly followed and included, whether in the master intergovernmental contract or in the Airports Authority's purchase documents. When using GSA schedules to acquire property or services, the Contracting Officer will seek offers from at least three sources, will consider whether the GSA price is reasonable and may seek a lower price than that published on the GSA schedules. [FTA C 4220.1F, Ch. V, para. 6]

~~10.4.14.7~~10.4.8.7 Existing Contracts.

For purposes of this section, an "existing contract" means a contract that, when formed, was intended to be limited to the original parties thereto.

Permissible Actions. The Airports Authority may use existing contract rights held by another Recipient, and may assign excess contract rights in its own contracts to another Recipient in the following circumstances:

- (1) Exercise of Options Held by Other Recipients. The Airports Authority may use contract options held by another Recipient with the following limitations:
  - (a) Consistency with the Underlying Contract. The Contracting Officer will ensure that the terms and conditions of the option it seeks to exercise are substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded.
  - (b) Price. The Contracting Officer will not use an option held by another Recipient unless it has been determined, by price analysis, that the option price is more advantageous than prices available in the market, or that the option, when exercised, is more advantageous than procuring on the open market.
- (2) Exercise of Options Held by Airports Authority:

- (a) Treated as Sole Source Procurements in Certain Circumstances.

When an Airports Authority contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award.

Similarly, exercising an option after the Contracting Officer has negotiated a lower or higher price for the option period or quantity will also result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or results from Federal actions that can be reliably measured, such as changes in Federal prevailing labor rates.

- (b) Price. The Contracting Officer will not use an option held by the Airports Authority unless it has been determined, by price analysis, that the option price is more advantageous than prices available in the market, or that the option, when exercised, is more advantageous than procuring on the open market.

- (3) Assignment of Contract Rights (Piggybacking).

(a) Assignment by Airports Authority. The Airports Authority is expected to limit its procurements to the amount of property and services required to meet its reasonably expected needs without adding excess capacity simply for the purpose of assigning contract rights to others at a later date. Thus, the Contracting Officer will document the contract file justifying the quantities procured, and when property or services are solicited, competed, and awarded through the use of an indefinite-delivery-indefinite-quantity (IDIQ) contract, the solicitation and the contract will contain both a minimum and maximum quantity that represent the Airports Authority's reasonably foreseeable needs.

However, when the Airports Authority finds that it has inadvertently acquired contract rights in

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excess of its needs, it may assign those contract rights to other Recipients if the original contract contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions.

(b) Assignment to Airports Authority. Although FTA does not encourage the practice, the Airports Authority may acquire contract rights through assignment by another Recipient. For this to occur, the Contracting Officer will (i) determine that the contract price remains fair and reasonable and the contract provisions are adequate for compliance with all Federal requirements (ii) ensure the contractor's compliance with FTA's Buy America requirements and execution of Buy America certifications, and (iii) ensure that the quantities acquired to date under the contract, together with the quantities sought by the Airports Authority do not exceed the quantities of the original contract.

(c) Alternatives to Assignment of Contract Rights. The Airports Authority recognizes that since assignments limit the Airports Authority's choices to specific property and services acquired to meet another Recipient's particular needs, it may more desirable to use intergovernmental procurements or joint procurements to obtain better pricing.

Impermissible Actions. The following actions are not permitted in conjunction with contracts to which this Chapter 10 applies:

- (1) Improper Contract Expansion. The Airports Authority may not improperly expand a contract. This occurs when a contract includes a larger scope, greater quantities, or options beyond the Airports Authority's reasonably anticipated needs. It also occurs when a contract includes excess capacity which has been added primarily to permit assignment of the excess rights to another entity. The Airports Authority may not

enter into a contract for quantities that it does not itself need.

- (2) Cardinal Changes. The Airports Authority may not make any cardinal changes to a contract.

[FTA C 4220.1F, Ch. V, para. 7]

#### ~~10.4.14.8~~10.4.8.8 The Open Market.

The Airports Authority will acquire most of the property and services it needs through procurements in the open market.

[FTA C 4220.1F, Ch. V, para. 8]

### ~~10.4.15.1~~10.4.9 Resolution of Third Party Contract Issues

#### ~~10.4.15.1~~10.4.9.1 Protests.

The protest procedures in Chapter 7 of this Manual will govern procurement protests to which this Chapter 10 applies and are supplemented by the following provisions.

The Airports Authority's Role and Responsibilities. The Airports Authority will provide the following information to the FTA in the event of a protest:

- (1) Timely Notification. The Airports Authority will notify the FTA when it receives a protest and will keep the FTA informed about the status of all filed protests. The following information will be provided to the FTA Regional Administrator:

- (a) A list of filed protests in procurements that:

Have a value exceeding \$100,000, or

Involve a controversial matter, irrespective of amount, or

Involve a highly publicized matter, irrespective of amount.

- (b) The following information about each protest:

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<p>A brief description of the protest,</p> <p>The basis of disagreement, and</p> <p>If open, how far the protest has proceeded or, if resolved, the agreement or decision reached, and</p> <p>Whether an appeal has been taken or is likely to be taken.</p> <p>(c) The Airports Authority will provide this information in its quarterly Milestone Progress Reports, and at its next Project Management Oversight reviews, if any and generally will keep the FTA project manager informed about protests.</p> <p>(d) The Airports Authority will also provide notice of any decision to deny a protest.</p> <p>(2) Additional Information. The Airports Authority will disclose information about any protest that is requested by FTA to and will provide any documentation requested.</p> <p>FTA Role and Responsibilities. The FTA has developed an appeals process for reviewing a Recipient's decision in procurement protests.</p> <p>(1) Only an "interested party" qualifies for FTA review of its appeal. An "interested party" is a party that is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award the Third Party Contract at issue. A subcontractor does not qualify as an "interested party."</p> <p>(2) The protester must exhaust its administrative remedies by pursuing the protest procedures in Chapter 7 of this Manual to completion before appealing an Airports Authority decision to the FTA.</p> <p>(3) The protester must deliver its appeal to the FTA Regional Administrator within five (5) working days of the date on when the protester has received actual or constructive notice of the</p>	<p>Airports Authority's final decision in its protest or must identify other grounds for appeal, such as the Airports Authority's failure to comply with its protest procedures or its refusal to review the protest.</p> <p>(4) The FTA will limit its review of protest appeals to:</p> <p>(a) whether the Airports Authority has failed to comply with its protest procedures or has refused to review the protest when presented with an opportunity to do so; and</p> <p>(b) at the discretion of the FTA, whether the Airports Authority, in the course of the procurement, has violated a Federal law or regulation.</p> <p>[FTA C 4220.1F, Ch. VII, para. 1]</p> <p><del>10.4.15.2</del>10.4.9.2 <u>Changes and Modifications.</u></p> <p>The Contracting Officer is responsible for issuing, evaluating and making necessary decisions involving changes to Airports Authority contracts, and for preparing and executing change orders or modifications issued in accordance with the Changes Provision in Airports Authority contracts. The Contracting Officer is also responsible for evaluating and making the necessary decisions involving any claim of a constructive change.</p> <p>The Contracting Officer must have cost justifications supporting any change order and have the proposed change approved before it is issued. To be eligible for FTA assistance, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. [FTA C 4220.1F, Ch. VII, para. 2]</p> <p><del>10.4.15.3</del>10.4.9.3 <u>Disputes.</u></p> <p>The Airports Authority Role and Responsibilities. The Airports Authority is responsible for evaluating and resolving Third Party Contract disputes. The disputes procedures in Chapter 8 of this Manual will apply to</p>
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disputes arising under contracts awarded pursuant to this Chapter 10. In order for payments made to a third party contractor to settle a dispute to be eligible for Federal assistance, the Airports Authority will take the following actions:

- (1) Notify FTA about Disputes. The Airports Authority will notify the FTA when it receives a Third Party Contract dispute, and keep the FTA informed about the status of the dispute. The following information will be provided:

- (a) A list of actual and potential disputes involving Third Party Contracts that:

- Have a value exceeding \$100,000,

- Involve a controversial matter, irrespective of amount, or

- Involve a highly publicized matter, irrespective of amount.

- (b) The following information about each dispute:

- A brief description of the dispute,

- The basis of disagreement, and

- If open, how far the dispute has proceeded or, if resolved, the agreement or decision reached.

- (c) The Airports Authority will provide this information in quarterly Milestone Progress Reports, and at its Project Management Oversight reviews, if any.

- (d) The Airports Authority will also endeavor to keep its FTA project manager informed about disputes with which it is involved.

- (2) Documentation of Disputes. The Contracting Officer will include adequate documentation in the project files of the facts, events, negotiations, applicable laws related to a dispute, as well as a legal evaluation of the likelihood of success in any potential litigation involving the dispute, as

may be needed to justify FTA's concurrence in any compromise or settlement of the dispute, should FTA concurrence become necessary.

- (3) Audit. Since an audit may help the Airports Authority demonstrate that the costs incurred in settling a dispute are necessary, reasonable, adequately documented, and appropriate for FTA support, it will consider conducting or obtaining an audit before settling large contract disputes. Any such audit will be conducted in accordance with "Generally Accepted Auditing Standards" as defined by the American Institute of Certified Public Accountants.

FTA Role and Responsibilities. In light of its financial interest in the settlement of disputes involving Third Party Contracts, the FTA retains the following rights:

- (1) The FTA may review the reasonableness of a negotiated settlement to determine the extent of its participation in the costs of the settlement.
- (2) The FTA may review the Airports Authority's files and history pertaining to the dispute or experience under a particular grant or cooperative agreement.

If the Airports Authority has already disbursed Federal Funds to settle a contract dispute which is determined to be ineligible for FTA assistance, the Airports Authority will return those funds to the FTA, unless the FTA determines otherwise. The FTA reserves the right to defer financial participation in settlement costs until it receives an adequate audit. [FTA C 4220.1F, Ch. VII, para. 3]

#### ~~10.4.15.4~~10.4.9.4 Claims and Litigation.

The Airports Authority Role and Responsibilities. The Airports Authority will evaluate and attempt to reach a reasonable resolution of claims and litigation arising from a contractor's violation, default, or breach of a Third Party Contract. The Airports Authority will also evaluate and attempt to reach a reasonable resolution of claims a contractor may present against it and related litigation. The Airports Authority will use the procedures in Chapter 8 of this Manual in addressing

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claims and litigation arising from Third Party Contracts awarded pursuant to this Chapter 10, and, in addition, will take the following actions.

- (1) The Airports Authority will provide the following information to the FTA in connection with claims and litigation:

- (a) A list of claims and litigation involving Third Party Contracts and Potential Third Party contracts that:

- Have a value exceeding \$100,000,

- Involve a controversial matter, irrespective of amount, or

- Involve a highly publicized matter, irrespective of amount.

- (b) The following information about each claim or lawsuit:

- A brief description of the claim or lawsuit,

- The basis of disagreement,

- If open, how far the claim or litigation has proceeded or, if resolved, the decision or agreement reached, and whether an appeal has been or is likely to be taken.

- (c) The Airports Authority will provide this information in its quarterly Milestone Progress Reports, and at its Project Management Oversight reviews, if any, and will also keep its FTA project manager informed about claims and lawsuits with which it is involved.

- (2) In resolving Third Party Contract claims, the Airports Authority will take reasonable measures to pursue its rights and remedies available under the contract and law, including settlement, particularly if failure to do so would jeopardize the Federal interest in the project or cause the Airports Authority to seek additional Federal assistance.

FTA Role and Responsibilities. In light of its financial interest in claims and litigation involving Third Party Contracts, the FTA retains the following rights:

- (1) The FTA retains a right to a share of any net proceeds recovered by the Airports Authority through the settlement or other resolution of a claim or lawsuit in proportion to the amount the FTA has committed to the project, unless the FTA permits other uses of the proceeds.
- (2) Where the Airports Authority has recovered liquidated damages under a liquidated damages contract provision, the FTA retains the right to have the Airports Authority credit the recovered damages to the Federally-assisted project, unless the FTA permits other uses of the damages.

[FTA C 420.1F, Ch. VII, para. 4]

~~10.4.15.5~~10.4.9.5 FTA Participation in Settlements, Arbitration Awards, and Court Awards.

The Airports Authority's Role and Responsibilities.

- (1) The FTA recognizes that a settlement of Third Party Contract claims may require the Airports Authority to relinquish its rights to amounts it would otherwise be due under the contract, including amounts for liquidated damages and other matters, were it to prevail on all matters at issue. Nonetheless, the FTA expects the Airports Authority to enter into a settlement only if it can demonstrate the terms of the settlement to be reasonable.
- (2) To justify the FTA's participation in settlements, arbitration awards, or court awards, the Airports Authority's records must be sufficient to demonstrate that it has taken reasonable and prudent measures to prevent or offset the actions or circumstances that had resulted in the underlying dispute, claim, or litigation.
- (3) The Airports Authority will secure FTA's review and written concurrence of any proposed settlement, or of any arbitration or court award



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before using Federal assistance to support the costs of the settlement or award, if one of the following circumstances is present:

- (a) When the settlement or award exceeds \$100,000.
- (b) When the approved project lacks sufficient funds to cover the settlement costs.
- (c) When a special Federal interest or Federal concern is declared due to program management concerns, possible mismanagement, impropriety, waste, or fraud.

#### FTA Role and Responsibilities.

- (1) The FTA reserves the right to review the Airports Authority's supporting documentation of the settlement or award.
- (2) If FTA assistance is available, the FTA may provide a prorated share of any eligible costs that result from the settlement or award so long as the underlying dispute or claim was not caused by the Airports Authority's mismanagement and is attributable to the contractor, and the costs are otherwise properly incurred.
- (3) Costs incurred in connection with the settlement or award that are the result of the Airports Authority's negligence or error are usually ineligible for FTA participation. The FTA reserves the right to determine the extent to which FTA assistance may be used for any such settlement or award.

[FTA C 4220.1F, Ch. VII, para. 5]

#### ~~10.4.16.1~~ **10.4.10 Determining the Airports Authority's Needs**

In undertaking procurements under this Chapter 10, the Airports Authority will document that the procurement addresses only its minimum needs. The documentation containing the basis or justification for determining the type and amount of property and services to be

acquired through a procurement will address the following requirements and other matters.

#### ~~10.4.16.1~~ **10.4.10.1 Eligibility.**

The Airports Authority will only acquire property and services that are eligible for acquisition under the Federal law authorizing the applicable FTA assistance award and any related regulations. [FTA C 4220.1F, Ch. IV, para. 1.a]

#### ~~10.4.16.2~~ **10.4.10.2 Necessity.**

The Airports Authority will contract only for its current and reasonably expected needs and will not add quantities or options to Third Party Contracts to permit assignment to another party at a later date. If the Airports Authority's needs later change due to changed circumstances or honest mistakes, it may assign its unneeded contract authority to another entity that would like to acquire the property or services. [FTA C 4220.1F, Ch. IV, para. 1.b]

#### ~~10.4.16.3~~ **10.4.10.3 Procurement Size.**

The Contracting Officer will consider whether to consolidate or break out elements of the procurement to obtain a more economical purchase.

- (1) Joint Procurements. It may be economically advantageous for the Airports Authority to enter into a joint procurement with others that have similar needs. Participation in a joint procurement, however, does not relieve the Airports Authority from the requirements and responsibilities it would have were it were procuring the property or services itself, and does not diminish its responsibility for the actions of other participants because the primary administrative responsibility for a particular action resides in an entity other than in itself.

[FTA C 4220.1 F, Ch. IV, para. 1.c(1)]

- (2) Smaller Procurements. In some circumstances, breaking out procurements may provide greater opportunities for Disadvantaged Business Enterprises (DBEs), small and minority firms, and women's business enterprises to participate.

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Absent efforts to foster greater opportunities for DBE, small and minority firms, and women's business enterprises, the Contracting Officer will not split a larger procurement merely to gain the advantages of small purchase procedures available under Paragraph 10.4.6.2.

[FTA C 4220.1 F, Ch. IV, para. 1.c(2)]

- (3) Options. Contracts may include options to ensure the future availability of property or services, so long as the requesting office is able to justify them as needed for its project purposes. An option is a unilateral right in a contract by which, for a specified time, the Airports Authority may acquire additional equipment, supplies, or other property, or services than procured for the contract term. An option may also extend the term of the contract. [FTA C 4220.1F, Ch. IV, para. 1. d]
- (4) Lease Versus Purchase. The Airports Authority will lease, rather than acquire, property only if leasing is more cost effective than full ownership. Before the Airports Authority may lease an asset, the Contracting Officer will make a written comparison of the cost of leasing the asset compared with the cost of purchasing or constructing the asset. Costs used in the comparison will be reasonable and based on realistic current market conditions, and the expected useful service life of the asset. [FTA C 4220.1F, Ch. IV, para. 1.e]
- (5) Specifications. The Contracting Officer will ensure that the requesting offices prepare specifications that describe their needs and are not exclusionary, discriminatory, unreasonably restrictive, or otherwise in violation of Federal laws or regulations. In general, the specifications will clearly describe the property or services to be procured and state how the proposals will be evaluated. [FTA C 4220.1F, Ch. IV, para. 1.f]

## **10.5 FEDERAL REQUIREMENTS THAT MAY AFFECT THE AIRPORTS AUTHORITY'S ACQUISITIONS**

In order for the Airports Authority to use FTA assistance to support the acquisitions of property or services to which this Chapter 10 applies, it must comply with a variety of Federal requirements, arising under Federal laws and regulations, that apply to such acquisitions. These requirements, and the Airports Authority's compliance with them, are addressed in this Paragraph 10.5.

### **~~10.5.7~~10.5.1 Contractor Qualifications.**

The following requirements will be addressed by the Contracting Officer when making the contractor selections.

#### **~~10.5.7.1~~10.5.1.1 Responsibility Requirements.**

The Airports Authority will only award contracts to responsible contractors. Responsible contractors are those contractors capable of successfully performing under the terms and conditions of the proposed contract. Before selecting a contractor for a contract, the Contracting Officer will consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Before selecting a contractor to perform design or construction work on a fixed guideway project, the Contractor Officer will consider the contractor's past performance information reported in FTA's required Contractor Performance Assessment Reports. [FTA C 4220.1F, Ch. IV, para. 2.a(1)]

#### **~~10.5.7.2~~10.5.1.2 Debarment and Suspension.**

- (1) The Contracting Officer will ensure that the Federal Debarment and Suspension clause (See Appendix L, Clause 9) is included in any contracts of \$25,000 or more. When such a contract is involved, all potential contractors will be required to submit a Debarment and Suspension Certification as part of their bid/proposal packages, and, if selected, to ensure that this same requirement is placed in all of their lower tier contracts.

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- (2) The Contracting Officer also will check the General Services Administration Excluded Parties List System before awarding contracts of \$25,000 or more. A screen print of the webpage will be included in the contract file.
- (3) The Contracting Officer may treat any potential contractor or subcontractor listed on a centralized State government debarment and suspension list as non-responsible and ineligible for contract award.

[FTA C 4220.1F, Ch. IV, para. 2.a(2)]

#### ~~10.5.7.3~~10.5.1.3 Conflict of Interest.

The Contracting Officer will consider any conflict of interest issues a potential contractor might have, including lack of impartiality, impaired objectivity, or unfair competitive advantage. [FTA C 4220.1F, Ch. IV, para. 2.a(3)]

#### ~~10.5.7.4~~10.5.1.4 Lobbying Certification and Disclosure.

The Contracting Officer will include a Federal lobbying clause in any contract exceeding \$100,000 (See Appendix L, Clause 12). [FTA C 4220.1F, Ch. IV, para. 2.a(4)]

#### ~~10.5.7.5~~10.5.1.5 Federal Civil Rights Laws and Regulations.

The Contracting Officer will include the Federal Civil Rights clause (see Appendix L, Clause 6) in each contract exceeding \$10,000. The Federal Civil Rights requirements include, but are not limited to Federal requirements relating to equal employment opportunity Requirements, nondiscrimination on the basis of sex, nondiscrimination on the basis of age, and Federal protections for individual with disabilities. [FTA C 4220.1F, Ch. IV, para. 2.a(5)]

#### ~~10.5.7.6~~10.5.1.6 Socio-Economic Development.

The following provisions arise from Federal laws and regulations that require competitive opportunities to be made available for contractors that qualify as a Disadvantaged Business Enterprise, minority owned firm, women's business enterprise, or small business.

- (1) Disadvantaged Business Enterprises (DBE). Federal law requires the FTA to make available at least 10 percent of its funding for contracts with small business concerns owned and controlled by socially and economically disadvantaged people. Recipients like the Airports Authority assist the FTA in meeting this national goal. Whenever, by virtue of a grant or other form of Federal assistance, the Airports Authority is required to have a DBE program, that program will address Third Party Contracts which will be funded in part by the Federal assistance and, in addition, where appropriate, will establish a DBE goal related to such Third Party Contracts. [FTA C 4220.1F, Ch. IV, para. 2.a(6)(a)]
- (3) Small and Minority Firms and Women's Business Enterprises. In order to ensure that it uses small and minority firms and women's business enterprises in Third Party Contracts to the fullest extent practicable, the Airports Authority will make information available to potentially qualified firms about procurement opportunities, will include these firms on solicitation lists, and will request their participation when they are potential sources. In addition, in order to make procurement opportunities available to these firms, the Airports Authority will divide total procurement requirements into smaller tasks or quantities when economically and operationally feasible. The Contracting Officer will require third party contractors to ensure that the preceding provisions are placed in all lower tier contracts. [FTA C 4220.1F, Ch. IV, para. 2.a(6)(b)]

#### ~~10.5.7.7~~10.5.1.7 Sensitive Security Information.

The Contracting Officer will ensure that each third party contractor protects, and takes measures to ensure that its subcontractors at each tier protect, "sensitive security information" made available during the administration of the contract or subcontract. [FTA C 4220.1F, Ch. IV, para. 2.a(7)]

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~~10.5.7.8~~10.5.1.8 **Seat Belt Use.**

The Contracting Officer will encourage each third party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned or rented or personally operated vehicles, and will require the contractor to ensure that this provision is included in all lower tier contracts. [FTA C 4220.1F, Ch. IV, para. 2.a(8)]

~~10.5.8~~10.5.2 **Administrative Restrictions on the Acquisition of Property and Services.**

~~10.5.8.1~~10.5.2.1 **Legal Eligibility.**

Before proceeding with the acquisition of any property or services, the Contracting Officer will determine that the property or services are eligible for support under the Federal law applicable to the Federal assistance to be used. [FTA C 4220.1F, Ch. IV, para. 2.b(1)]

~~10.5.8.2~~10.5.2.2 **Scope of the Project.**

Before proceeding with the acquisition of any property or services, the Contracting Officer will determine that the property or services are eligible for support under the specific grant which is providing the Federal assistance to be used. [FTA C 4220.1F, Ch. IV, para. 2.b(2)]

~~10.5.8.3~~10.5.2.3 **Period of Performance (Contract Term).**

The Contracting Officer will use sound business judgment and be judicious in establishing and extending a contract's period of performance or term. A contract's period of performance will be reasonable. Generally, the period will not exceed the time necessary to accomplish the purpose of the contract, although other factors, including competition, pricing, fairness and public perception, will be considered in setting the period. The Contracting Officer will document the rationale for determining the performance period for each contract. While the Airports Authority has no plans to acquire rolling stock, it should be noted that FTA restricts any contract for rolling stock and replacement parts with a period of

performance not to exceed five years, inclusive of options.

When considering an extension to a contract term, the Contracting Officer will determine whether it represents a permissible contract change or an impermissible Cardinal Change. Any extension that represents a Cardinal Change will not be approved. [FTA C 4220.1 F, Ch. IV, para. 2.b(3)]

~~10.5.8.4~~10.5.2.4 **Federal Cost Principles.**

Under the Common Grant Rule, Third Party Contract costs are to conform to applicable Federal cost principles to be eligible for Federal assistance. The Contracting Officer will ensure that costs incurred under Third Party Contracts awarded conform to applicable Federal cost principles and, in addition, are necessary and reasonable, are allocable to the underlying Federally-assisted project, and are either authorized or not prohibited by Federal law or regulation. [FTA C 4220.1F, Ch. IV, para. 2.b(4)]

~~10.5.8.5~~10.5.2.5 **Payment Provisions**

The Airports Authority may use its own funds to finance its Third Party Contracts. However, where the Airports Authority intends to make contract payments with FTA assistance, to make payments with its own funds but be reimbursed with FTA assistance, or to make payments with dedicated local share funds, it will structure its payment provisions according to the following.

- (1) The Airports Authority may not use FTA assistance to finance or reimburse contract costs or use dedicated local share funds for contract costs unless the FTA has (i) awarded a grant or other form of Federal assistance to the Airports Authority for or in connection with the underlying project, (ii) given the Airports Authority pre-award authority for the underlying project through a *Federal Register* notice, (iii) issued a letter of no prejudice for the underlying project, or (iv) approved specific contract costs in advance of their being incurred. [FTA C 4220.1F, Ch. IV, para. 2.b(5)(a)]

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- (2) Advance Payments. The following provisions apply to Advance Payments (as defined in Paragraph 10.1.1):

(a) Generally, the Airports Authority will not make Advance Payments (as defined in Paragraph 10.1.1) to a contractor since these payments are usually not eligible for Federal assistance.

(b) The FTA occasionally makes exceptions to its Advance Payment prohibitions when a Recipient can provide sound business reasons for making such payments and has obtained the FTA's advance written concurrence. When the FTA has approved the Airports Authority's use of Advance Payments and unless the FTA has otherwise instructed, the Contracting Officer will ensure that the contract has adequate provisions for security for those payments, usually in the form of a bond, letter of credit or corporate guaranty.

(c) The FTA also recognizes that Advance Payments are typically required for such things as public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotel reservations, and conference and convention registrations. Accordingly, in contracts for the acquisition of such items, the Contracting Officer may provide for the making of Advance Payments; provided, that, when the total of such payments is expected to exceed \$100,000, the Contracting Officer will seek FTA concurrence of the payments.

[FTA C 4220.1F, Ch. IV, para. 2.b(5)(b)]

- (3) Progress Payments. The Contracting Officer may provide for the making of Progress Payments (as defined in Paragraph 10.1.10), provided adequate security is obtained for those payments and sufficient written documentation is provided to substantiate the work for which the payments are made.

(a) Adequate Security for Progress Payments. Adequate security for Progress Payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the Airports Authority's financial interest in the Progress Payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances. The FTA acknowledges the practical reality that taking title to work in progress may not be desirable in some circumstances. In determining the nature and extent of security, the Contracting Officer will consider the costs associated with providing the security and the impact of those costs on the contract price, as well as the consequences of incomplete performance.

(b) Adequate Documentation. The Contracting Officer will endeavor to ensure that documentation is prepared to demonstrate completion of the amount of work for which progress payments are made.

(c) Percentage of Completion Method. In accordance with the Common Grant Rule, Progress Payments for construction contracts will be made on the percentage of completion method described in the rule. Progress Payments for other contracts will not be based on this percentage method.

[FTA C 4220.1F, Ch. IV, para. 2.b(5)(c)]

~~10.5.8.6~~ 10.5.2.6 Protections Against Performance Difficulties.

The Airports Authority will include in contracts awarded under this Chapter 10 provisions that are designed to reduce potential problems that may occur during contract performance, including the provisions described below.

- (1) Changes. The Contracting Officer will include changes and changed conditions provisions or clauses in most contracts, except for routine supply contracts. [FTA C 4220.1F, Ch. IV, para. 2.b(6)(a)]



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- (2) Remedies. The Contracting Officer will include the following provisions, as applicable:

(a) Liquidated Damages. Provisions for liquidated damages will be included when the Airports Authority reasonably expects to suffer damages if contract completion is delayed, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. The rates or standards to be used in calculating the amount of liquidated damages are to reasonably reflect the Airports Authority's damages should the contract completion be delayed, and are to be specified in the solicitation and contract. The calculation of liquidated damages is often established at a specific rate per day for each day beyond the contract's completion or delivery date or performance period. The Contracting Officer will include in the procurement file a record of the calculation and rationale for the daily rate or other amount of damages established. Any liquidated damages recovered will be credited to the underlying project account unless the FTA permits otherwise.

(b) Violation or Breach. Contracts exceeding \$100,000 will include administrative, contractual, or legal remedies for violations or breaches of the contract by the contractor.

(c) Suspension of Work. When specifically required by the FTA, provisions pertaining to suspension of work will be included.

(d) Termination. Termination for cause and termination for convenience provisions will be included in contracts exceeding \$10,000.

[FTA C 4220.1F, Ch. IV, para. 2.b(6)(b)]

### ~~10.5.9.1~~10.5.3 **Socio-Economic Requirements for the Acquisition of Property and Services.**

#### ~~10.5.9.1~~10.5.3.1 **Labor.**

The following Federal labor protection laws and regulations may affect the types of property and services that may be acquired with FTA assistance:

- (1) Wage and Hour Requirements. The Airports Authority will include provisions in contracts exceeding \$100,000 that require the contractor, except where permitted by law, to compute the wages of every worker based on a standard workweek of forty (40) hours and that provide that work in excess of the standard workweek is permitted only if the worker is compensated, at a rate of not less than one and one-half times the worker's basic rate of pay, for all hours worked in excess of forty (40) hours in the workweek. In addition, the Airports Authority will include provisions in construction contracts exceeding \$2,000 that require the contractor to comply with the prevailing wage requirements of the Davis-Bacon Act.
- (2) Fair Labor Standards. The Airports Authority will include a provision in all contracts stating that the Fair Labor Standards Act, 29 U.S.C. Sections 201 *et seq.*, applies to employees performing work involving commerce.

[FTA C 4220.1F, Ch. IV, para. 2.c(1)]

#### ~~10.5.9.2~~10.5.3.2 **Civil Rights.**

The Airports Authority will include the Federal civil rights provision (see Appendix L, Clause 6) in all contracts exceeding \$10,000. [FTA 4220.1F, Ch. IV, para. 2.c(2)]

#### ~~10.5.9.3~~10.5.3.3 **Environmental Protections.**

- (1) Environmental Mitigation. The Contracting Officer will include the Federal environmental contract provision, (see Appendix L) in all

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<p>contracts. [FTA C 4220.1F, Ch. IV, para. 2.c(3)(a)]</p> <p>(2) National Environmental Policy Act. Certain acquisitions and the timing of certain acquisitions can adversely affect the environmental review process required for a project constituting a major Federal action. The Airports Authority will not enter a contract or other binding arrangement for the acquisition of property that may or would affect environmental impact determinations with respect to the underlying project, or otherwise interfere with any required environmental impact reviews, until applicable environmental impact determinations have been made. [FTA C 4220.1F, Ch. IV, para. 2.c(3)(b)]</p> <p>(3) EPA Violating Facilities. In accordance with the Common Grant Rule, the Airports Authority will not enter any contract that provides for, or allows at any tier exceeding \$100,000, the use of any facility included in the Environmental Protection Agency “List of Violating Facilities.” [FTA C 4220.1F, Ch. IV, paras. 2.c(3)(d) and 2.c(3)(e)]</p> <p>(4) Clean Air. The Contracting Officer will include a provision in all contracts exceeding \$100,000, that requires the contractor to comply with all applicable standards, orders, or regulations issued under the Clean Air Act, as amended, 42 U.S.C. Section 7414, <i>et. Seq.</i>, as amended, and to ensure that this same requirement is in subcontracts exceeding \$011,000 at all tiers. [FTA C 4220.1F, Ch. IV, para. 2.c(3)(d)]</p> <p>(5) Clean Water. The Contracting Officer will include a provision in all contracts exceeding \$100,000, that requires the contractor to comply with all applicable standards, orders, or regulations issued under the Clean Water Act, 33 U.S.C. Section 1251, <i>et. seq.</i>, as amended, and to ensure that this same requirement is in subcontracts exceeding \$100,000 at all tiers. [FTA C 4220.1F, Ch. IV, para. 2.c(3)(e)]</p> <p>(6) Recycled Products. In the acquisition of property and services of \$10,000 or more, the Airports</p>	<p>Authority will provide a competitive preference, in accordance with the Resource Conservation and Recovery Act of 1976, to products and services that conserve natural resources, protect the environment, and are energy efficient. [FTA C 4220.1F, Ch. IV, para. 2.c(3)(f)]</p> <p><del>10.5.9.4</del><u>10.5.3.4</u><u>Energy Conservation.</u></p> <p>The Airports Authority will include the Federal energy conservation provision (see Appendix L, Clause 26), in all contracts. [FTA C 4220.1F, Ch. IV, para. 2.c(4)]</p> <p><del>10.5.9.5</del><u>10.5.3.5</u><u>Preference for U.S. Property—Buy America.</u></p> <p>The FTA’s “Buy America” regulations apply to procurements in excess of \$100,000 that involve the purchase of iron, steel, manufactured goods, or rolling stock to be delivered to the Airports Authority for incorporation into an FTA-assisted project. Property that the contractor acquires to fabricate a deliverable for the Airports Authority, such as tools, machinery, facilities or other assets, are not subject to FTA’s Buy America requirements unless the Airports Authority intends to take possession of those assets upon completion of the project. The Contracting Officer will include the appropriate Buy America provision (see Appendix L, Clause 10) in all appropriate contracts. [FTA C 4220.1F, Ch. IV, para. 2.c(5)]</p> <p><del>10.5.9.6</del><u>10.5.3.6</u><u>Shipments of Property—U.S. Flag Requirements.</u></p> <p>(1) Shipments by Ocean Vessel. With few exceptions, Federal regulations require that U.S. Flag vessels be used to transport at least fifty (50) percent of any Federally assisted property. The Contracting Officer will include the Federal Cargo Preference provision (See Appendix L, Clause 15) in all contracts where the transportation of goods will be by ocean freight. [FTA C 4220.1F, Ch. IV, para. 2.c(6)(a)]</p> <p>(2) Shipments by Air Carrier. The Fly America Act requires certain air shipments to be made on U.S. flag carriers unless U.S. flag carriers are not reasonably available. The Contracting Officer will include the Federal fly America provision</p>
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(see Appendix L, Clause 16) in all contracts where transportation of goods will be by air freight. [FTA C 4220.1F, Ch. IV, para. 2.c(6)(b)]

#### ~~10.5.9.7~~10.5.3.7 **Project Travel—Use of U.S. Flag Air Carriers.**

The Fly America Act requires that air travel needed for people participating in a Federally assisted project to be by U.S. flag carrier, unless U.S. flag carriers are not reasonably available. The Contracting Officer will include the Federal fly America provision (see Appendix L, Clause 16) in all contracts where air travel is involved. [FTA C 4220.1F, Ch. IV, para. 2.c(7)]

### ~~10.5.10~~10.5.4 **Technical Restrictions on the Acquisition of Property and Services.**

#### ~~10.5.10.1~~10.5.4.1 **Intelligent Transportation Systems.**

Procurements of intelligent transportation system (ITS) property and services are to comply with the National ITS Architecture and Standards. The Contracting Officer will ensure the Federal ITS provision (see Appendix L, Clause 28) is included in all contracts involving ITS. [FTA C 4220.1F, Ch. IV, para. 2.d(1)]

#### ~~10.5.10.2~~10.5.4.2 **Metric Measurements.**

The Airports Authority will accept property and services with dimensions expressed in metric measurements, to the extent practicable and feasible. [FTA C 4220.1F, Ch. IV, para. 2.d(2)]

#### ~~10.5.10.3~~10.5.4.3 **Use of \$1 Coins.**

When procuring FTA assisted property that requires the use of coins or currency in public transportation service or supporting service, the Contracting Officer will ensure that the property is fully capable of accepting and dispensing \$1 coins. [FTA C 4220.1F, Ch. IV, para. 2.d(3)]

### ~~10.5.11~~10.5.5 **Rolling Stock – Special Requirements.**

The Airports Authority does not procure rolling stock, to include buses and railcars, in procurements subject to this chapter 10. [FTA C 4220.1F, Ch. IV, para. 2.e]

### ~~10.5.12~~10.5.6 **Public Transportation Services – Special Requirements.**

Federal requirements applicable to the acquisition of property and services to be used in the delivery of public transportation services are inapplicable to the Airports Authority since it does not deliver such services. [FTA C 4220.1F, Ch. IV, para. 2.f]

### ~~10.5.13~~10.5.7 **Construction – Special Requirements.**

#### ~~10.5.13.1~~10.5.7.1 **Bonding.**

Under the Common Grant Rule bonds are to be obtained for construction contracts exceeding the Federal simplified acquisition threshold (as of July 2011, \$100,000) unless the FTA determines that other arrangements adequately protect the Federal interest. The following provisions are based upon FTA's bonding requirements and policies, and apply to construction procurements in excess of \$100,000:

- (1) **Bid Guarantee.** The Contracting Officer will require each bidder to provide a bid guarantee equivalent to five percent (5%) of its bid price. The "bid guarantee" must consist of a firm commitment, such as a bid bond, certified check, or other negotiable instrument accompanying a bid, that ensures that the bidder will honor its bid upon acceptance.
- (2) **Performance Bond.** The Contracting Officer will require the selected third party contractor to obtain a performance bond for 100 percent (100%) of the contract price unless a lower bond is approved by the FTA (see paragraph (5) below). The performance bond shall ensure completion of the contractor's obligations under the Third Party Contract.

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- (3) **Payment Bond.** The Contracting Officer will require the third party contractor to obtain a standard payment bond for 100 percent (100%) of the contract price, except when the Contracting Officer determines that the Airports Authority's interest will be adequately protected by a bond sized as provided in subparagraphs (a) through (c). The payment bond shall ensure that the contractor will pay all people supplying labor and material under the Third Party Contract as required by law.

(a) A bond between 100 percent (100%) and fifty percent (50%) of the contract price may be required if the contract price is \$1 million or less,

(b) A bond between 100 percent (100%) and forty percent (40%) of the contract price may be required if the contract price is more than \$1 million but not more than \$5 million, or

(c) A bond between 100 percent (100%) of the contract price and \$2.5 million if the contract price is \$5 million or more.

- (4) **Acceptable Sureties.** The Contracting Officer will require the contractor to obtain construction bonds from companies holding certificates of authority as acceptable sureties under U.S. Department of the Treasury regulations, "Surety Companies Doing Business with the United States," 31 CFR Part 223.
- (5) **Reduced Bonding.** FTA's BPPM (Section 8) recognizes that on certain types of projects, such as design-build and large capital projects (in excess of \$200 million), it may be appropriate for the Recipient to seek a waiver from the standard bonding requirements set forth in (1) through (3) above. FTA will approve bonds that are lower than the amounts set forth above if it determines that the lower bonds will adequately protect the Federal interest. In the event the Airports Authority wishes to adopt less stringent performance bonding requirements for a specific class of projects or for a particular project, it will submit its request and rationale to the FTA

Regional Administrator, and will establish lower performance bond requirements only as approved by the FTA.

- (6) **Higher Bonding.** If the Airports Authority's wishes to impose bonding requirements that exceed those described above in this section, it will submit a specific request and rationale to the FTA Regional Administrator, and will not impose those higher requirements without FTA approval.

[FTA C 4220.1F, Ch. IV, para. 2.i(1)]

#### ~~10.5.13.2~~ 10.5.7.2 **Seismic Safety.**

The Airports Authority will include the Federal seismic safety provision (see Appendix L, Clause 20) in contracts for the construction of new buildings or additions to existing buildings. [FTA C 4220.1F, Ch. IV, para. 2.i(2)]

#### ~~10.5.13.3~~ 10.5.7.3 **Value Engineering.**

The Contracting Officer will include value engineering provisions in contracts for construction projects whenever value engineering is a pre-requisite for an award of Federal assistance. In other cases, the Contracting Officer will determine whether the inclusion of such provisions in construction contracts would advance the Federal interest. (Note: The FTA generally does not approve a New Starts grant application for final design funding or enter a full funding grant agreement until value engineering is complete. Also, the FTA considers that some contractual arrangements (e.g., design-build contracts) inherently include value engineering and, for those contracts, does not require the value engineering provision. [FTA C 4220.1F, Ch. IV, para. 2.i(3)]

#### ~~10.5.13.4~~ 10.5.7.4 **Equal Employment Opportunity.**

The Contracting Officer will include in all construction contracts exceeding \$10,000 provisions (see Appendix L, Clause 6) requiring compliance with U.S. Department of Labor regulations for equal employment opportunity. [FTA C 4220.1F, Ch. IV, para. 2.i(4)]

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~~10.5.13.5~~10.5.7.5 Prevailing Wages.

The Contracting Officer will include in construction contracts exceeding \$2,000 a provision (see Appendix L, Clause 17) requiring compliance with the prevailing wage requirements of the Davis-Bacon Act and the flow down of these requirements into contracts at all tiers. [FTA C 4220.1F, Ch. IV, para. 2.i(5)]

~~10.5.13.6~~10.5.7.6 Anti-Kickback.

The Contracting Officer will include a provision (see Appendix L, Clause 17) for compliance with the Copeland “Anti-Kickback” Act, as amended, in construction and repair contracts exceeding \$2,000. [FTA C 4220.1F, Ch. IV, para. 2.i(6)]

~~10.5.13.7~~10.5.7.7 Construction Safety.

The Contracting Officer will include in construction contracts exceeding \$100,000 a provision (see Appendix L, Clause 18) to ensure safety at construction sites so that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous, as prohibited by the safety requirements of Section 107 of the Contract Work Hours and Safety Standards Act. [FTA C 4220.1F, Ch. IV, para. 2.i(7)]

~~10.5.13.8~~10.5.7.8 Labor Neutrality.

The Contracting Officer may include in construction contracts a provision requiring the use of a project labor agreement (PLA). In determining whether to include such a provision, the Contracting Officer will consider, among other things, the factors identified in the FAR, at 48 C.F.R. § 22.503, promulgated in response to Executive Order 13502 (February 6, 2009). Nothing in this section should be construed as limiting the ability of the Airports Authority to enter into a PLA in connection with a substantial construction project. [FTA C 4220.1F, Ch. IV, para. 2.i(8)]

~~10.5.13.9~~10.5.7.9 Preference for U.S. Property—  
Buy America.

The Contracting Officer will include a Buy America provision (see Appendix L, Clause 10) in construction contract exceeding \$100,000. See Paragraph 10.5.3.5, [FTA C 4220.1F, Ch. IV, para. 2.i(9)]

~~10.5.13.10~~10.5.7.10 Accessibility.

The Contracting Officer will include, in all construction contracts for facilities to be used in public transportation, a provision (see Appendix L, Clause 29) requiring those facilities to be accessible to individuals with disabilities and the elderly, as required by Federal law. [FTA C 4220.1F, Ch. IV, para. 2.i(10)]

[FTA C 4220.1F, Ch. IV, para. 2.h]

~~10.5.14~~10.5.8 **Research,  
Development, Demonstration,  
Deployment, and Special  
Studies – Special  
Requirements.**

The Airports Authority does not procure research, development, demonstration, deployment or special studies. [FTA C 4220.1F, Ch. IV, para. 2.j]

~~10.5.15~~10.5.9 **Audit Services.**

The following provisions apply to the Airports Authority's acquisition of audit services under this Chapter 10.

~~10.5.15.1~~10.5.9.1 Single Audit Act.

Each year in which it spends \$500,000 or more in Federal funds, the Airports Authority will obtain an audit as required by the Single Audit Act of 1984, as amended, 31 U.S.C. § 7501 *et seq.*, and will ensure compliance with OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” as revised.

- (1) Organizational Conflicts of Interest. The auditor selected will be independent of the Airports Authority.
- (2) Eligibility of Costs. The Airports Authority is authorized to charge the costs for audits required by the Single Audit Act to its Federally assisted projects as direct or indirect costs as permitted by applicable Federal Cost Principles. On the other hand, it is not authorized to finance audit costs with Federal assistance when the audit



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covers a year in which the Airports Authority has expended less than \$500,000 in Federal funds.

#### ~~10.5.15.2~~ 10.5.9.2 Other Project Audits.

Before procuring audit services for a specific contract or project, the Contracting Officer will consider the following:

- (1) Organizational Conflicts of Interest. In general, the auditor selected to perform the audit should be independent of the contractor to be audited.
- (2) Verification of Indirect Costs. Federal verification of a contractor's indirect cost rates, such as provisional overhead (burden) and General & Administrative (G&A) rates, may be required. To the extent possible, relevant information available through undisputed audits of the contractor by other recipients should be used.
- (3) Duplication of Services. To prevent duplication and ensure the eligibility of particular audit services for Federal financial participation, the Airports Authority will contact the FTA before awarding a contract for such services. Pre-award discussions with the FTA are particularly important in connection with the audit of A&E services since Federal law at 49 U.S.C. Section 5325(b)(3), requires that the cost principles in FAR Part 31 be used to audit A&E contracts and, in addition, that indirect cost rates established under FAR cost principles be utilized by A&E contractors and subcontractors.
- (4) Obtaining Indirect Cost Rates. The Airports Authority and third party contractors may obtain indirect cost rates through negotiations with OMB.
- (5) Eligibility of Costs. Costs of audits required by the Single Audit Act are eligible for Federal financial participation as a direct or indirect charge, as permitted by applicable Federal cost principles. (Note: The FTA reserves the right to disallow payments for duplicative audit costs or charges.)

[FTA C 4220.1F, Ch. IV, para. 2.k]

#### ~~10.5.16~~ 10.5.10 Record Keeping

Under the Common Grant Rule, the Airports Authority is generally required to prepare and maintain adequate and readily accessible performance, financial and other records relating to any project financed with FTA financial assistance, and to preserve these records for three years after final project payments are made and all other project matters are closed. In addition, the Airports Authority is to provide access to these records to the FTA, other DOT officials and the Comptroller General.

As part of this general obligation, the Airports Authority will prepare and maintain, and make available to the FTA, written records detailing the history of each Federally assisted project procurement and containing the following information prepared by the Contracting Officer responsible for the procurement.

- (1) Procurement Method. The Contracting Officer will provide the reasons for selecting the method of procurement used, including a sole source justification for any acquisition that does not qualify as competitive;
- (2) Contract Type. The Contracting Officer will provide the reasons for selecting the contract type it used (fixed price, cost reimbursement, etc.);
- (3) Contractor Selection. The Contracting Officer will provide the reasons for selecting or rejecting a contractor and also a written responsibility determination for the successful contractor; and
- (4) Cost or Price. The Contracting Officer will provide an evaluation of and the justification for the awarded contract cost or price.
- (5) Reasonable Documentation. The Contracting Officer will have discretion to determine the extent of documentation. However, the extent of documentation is to be reasonable and should be

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commensurate with the size and complexity of the procurement itself. Thus, procurements that are substantial may require extensive documentation.

[FTA C 4220.1F, Ch. III, para. 3.d(1)]

- (6) Access to Records. The Contracting Officer will include in all contracts a provision (see Appendix L, Clause 3) requiring the contractor to grant to the Airports Authority, FTA and DOT officials, the Comptroller General, and any of their representatives, the right to access, examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance.

[FTA C 4220.1 F, Ch. III, para. 3.d(2)]

## **10.6 PROCEDURAL GUIDANCE FOR OPEN MARKET PROCUREMENTS**

### **~~10.6.7~~10.6.1 Competition Required**

The FTA requires the Airports Authority to adopt procurement procedures, for use in acquisitions that are subject to this Chapter 10, which provide for Full and Open Competition, except as otherwise permitted. Accordingly, the Airports Authority will procure property and services, and award Third Party Contract, on the basis of the following.

- (1) Solicitation by the Airports Authority. The Airports Authority's solicitation and procurement methods are described above in Paragraph 10.4.6. Acquisitions made using these methods will fulfill the FTA requirements for Full and Open Competition. [FTA C 4220.1F, Ch. VI, para. 1.a]
- (2) Unsolicited Proposals. The Airports Authority may enter into contracts based on an unsolicited proposal. Receipt of an unsolicited proposal will not, by itself, justify contract award without providing for Full and Open Competition. Unless the unsolicited proposal offers a proprietary concept that is essential to contract performance, the Airports Authority will seek competition. To

satisfy the requirement for Full and Open Competition, the Contracting Officer will take the following actions before entering into a contract resulting from an unsolicited proposal.

(a) Receipt. Publicize its receipt of the unsolicited proposal,

(b) Adequate Description. Publicize an adequate description of the property or services offered in the unsolicited proposal without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the offered property or services,

(c) Interest in the Property or Services. Publicize the Airports Authority's interest in acquiring the property or services described in the unsolicited proposal,

(d) Adequate Opportunity to Compete. Provide an adequate opportunity for interested parties to comment or submit competing proposals, and

(e) Contract Award Based on Proposals Received. Publicize its intention to award a contract based on the unsolicited proposal or another proposal submitted in response to the publication.

(f) Sole Source Award. If it is impossible to describe the property or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the offered property or services, the Airports Authority may make a sole source award to the offeror of the unsolicited proposal. Such a sole source award may not be based solely on the unique capability of the offeror to provide the specific offered property or services.

[FTA C 4220.1F, Ch. VI, para. 1.b]

- (3) Prequalification. Prequalification lists are most commonly used in procurements of property involving lengthy evaluations needed to determine whether the property satisfies the Recipient's standards. The Airports Authority

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may prequalify people, firms, and property for procurement purposes if:

- (a) Lists. The Contracting Officer ensures that any prequalification list that is used is current.
- (b) Sources. The Contracting Officer ensures that the prequalification list includes enough qualified sources to provide Full and Open Competition.
- (c) Qualification Periods. The Contracting Officer permits potential bidders or offerors to qualify for the prequalification list during a solicitation period (from the issuance of the solicitation to its closing date). The Contracting Officer is not required to hold a particular solicitation open to accommodate a potential supplier that submits property for approval before or during that solicitation. Nor must the Airports Authority expedite or shorten prequalification evaluations of bidders, offerors, or property presented for review during the solicitation period.

[FTA C 4220.1F, Ch. VI, para. 1.c]

#### **10.6.810.6.2 Solicitation Requirements and Restrictions**

The Contracting Officer will ensure that each solicitation under this Chapter 10 provides the following information:

##### **10.6.8.110.6.2.1 Description of the Property or Services.**

The solicitation and the contract awarded will include a clear and accurate description of the Airports Authority's technical requirements for the property or services to be acquired in a manner that provides for Full and Open Competition.

- (1) What to Include. The description may include a statement of the qualitative nature of the property or services to be acquired. When possible, the Airports Authority will describe its requirements

in terms of functions to be performed or level of performance to be achieved, including the range of acceptable characteristics or minimum acceptable standards, rather than detailed product specifications. (Note: The FTA prefers performance or functional specifications, but does not prohibit the use of detailed technical specifications when appropriate.)

- (2) Quantities Limited to Actual Needs. The property and services to be acquired will be limited to the quantity of property and the extent of services the Airports Authority actually needs at the time of acquisition. The Airports Authority will not add quantities or options to contracts solely to allow it to assign these quantities or options at a later date.
- (3) Brand Name or Equal. When it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the property to be acquired, a "brand name or equal" description may be used to define the performance, in which case the salient characteristics that the "equal" property must possess will be identified.
- (4) Prohibitions. The Airports Authority will not use solicitation requirements that contain specifications or other features that unduly restrict competition or that are exclusionary or discriminatory. The following provisions describe certain solicitation features and other circumstances that are to be avoided.
  - (a) Excessive Qualifications. Imposing unreasonable business requirements for bidders or offerors.
  - (b) Unnecessary Experience. Imposing unnecessary experience requirements for bidders and offerors.
  - (c) Improper Prequalification. Using prequalification procedures that conflict with the procedures described in Paragraph 10.4.1(c) of this Manual.

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(d) Retainer Contracts. Making a noncompetitive award to any person or firm on a retainer contract if that award is not for the property or services specified for delivery under the contract.

(e) Excessive Bonding. In some circumstances, imposing high bonding requirements may increase the cost of the contract and thereby restrict competition, particularly on large capital projects (in excess of \$200 million), on design-build projects and for disadvantaged business enterprises. (Note: To encourage greater contractor participation, the FTA does not require the imposition of bonding requirements on contractors other than construction bonding. Where bonding requirements for a contract result in “excessive bonding,” under the Common Grant Rule, and as a result are deemed to be restrictive of competition, the FTA will not provide Federal assistance for that procurement.)

(f) Brand Name Only. Specifying only a “brand name” product without allowing offers of “an equal” product, or allowing “an equal” product without listing the salient characteristics that the “equal” product must meet to be acceptable for award.

(g) In-State or Local Geographic Restrictions. Specifying in-State or local geographical preferences, or evaluating bids or proposals in light of in-State or local geographic preferences, even if those preferences are imposed by State or local laws or regulations. Exceptions include the following:

Architectural Engineering (A&E) Services. Geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.

Licensing. A Commonwealth of Virginia license may be a procurement requirement provided the requirements does not conflict with Federal law.

Major Disaster or Emergency Relief. When Federal assistance for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities is being provided, a preference may be provided, to the extent feasible and practicable, for organizations, firms, and individuals residing or doing business primarily in the area affected by a major disaster or emergency.

(h) Organizational Conflicts of Interest. Engaging in practices that result in organizational conflicts of interest are prohibited:

Occurrence. An organizational conflict of interest occurs when any of the following circumstances arise:

1 Lack of Impartiality or Impaired Objectivity. A potential contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the Airports Authority due to other activities, relationships, contracts, or circumstances.

2 Unequal Access to Information. A potential contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.

3 Biased Ground Rules. During the conduct of an earlier procurement, a potential contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

Remedies. The Contracting Officer will analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and will avoid, neutralize, or mitigate such conflicts as early as possible.

(i) Restraint of Trade. Supporting or acquiescing in noncompetitive pricing practices between firms or between affiliated companies (e.g., the

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submissions of identical bid prices for the same products by the same group of firms, or an unnatural pattern of awards that have the cumulative effect of apportioning work among a fixed group of bidders or offerors).

(j) Arbitrary Action. Taking any arbitrary action in the procurement process.

[FTA C 4220.1F, Ch. VI, para. 2.a]

~~10.6.8.2~~ 10.6.2.2 Evaluation Factors.

The solicitation will identify all factors to be used in evaluating bids or proposals. [FTA C 4220.1 F, Ch. VI, para. 2.b]

~~10.6.8.3~~ 10.6.2.3 Contract Type Specified.

Solicitations will state the type of contract that will be awarded. Permissible types of contracts are described below.

(1) Typical Contract Types. Contract types may include the following:

(a) Firm Fixed Price. A firm fixed price contract contains a price that remains fixed irrespective of the contractor's cost experience in performing the contract. A firm fixed price contract may include an economic price adjustment provision, incentives and/or allowances.

(b) Cost Reimbursement. A cost-reimbursement contract provides for payment of the contractor's allowable incurred costs, to the extent prescribed in the contract. Allowable costs may include incentives if the Airports Authority believes they can prove helpful. Cost-reimbursement contracts are to be used only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract.

(2) Prohibited or Restricted Contract Types. The following contract types are restricted or prohibited:

(a) Cost Plus a Percentage of Cost—Prohibited. The Airports Authority will not use the “cost plus a percentage of cost” or “cost plus a percentage of construction cost” type of contract.

(b) Time and Materials—Restricted. The Airports Authority will use a “time and materials” type of contract only (i) after determining that no other contract type is suitable, and (ii) the contract specifies a ceiling price that, while not a firm fixed price, is a price the contractor may not exceed except at its own risk.

[FTA C 4220.1F, Ch. VI, para. 2c]

~~10.6.8.4~~ 10.6.2.4 Other Federal Requirements Affecting the Property or Services to be Acquired.

Solicitations, as well as awarded contracts, will identify those Federal requirements that will affect contract scope and performance. [FTA C 4220.1F, Ch. VI, para. 2.d]

~~10.6.8.5~~ 10.6.2.5 Other Federal Requirements Affecting the Bidder or Offeror and the Contractor.

Solicitations, as well as awarded contracts, under this Chapter 10, will identify all Federal requirements that a bidder or offeror must fulfill before and during contract performance. (See Paragraph 10.5.) [FTA C 4220.1F, Ch. VI, para. 2.e]

~~10.6.8.6~~ 10.6.2.6 Award to Other Than the Low Bidder.

When the Airports Authority intends to reserve its right to award to other than the low bidder or offeror, the solicitation will expressly state that intent and the reserved right. [FTA C 4220.1F, Ch. VI, para. 2.f]

~~10.6.8.7~~ 10.6.2.7 Rejection of All Bids or Offers.

The Airports Authority has the right to reject all bids or proposals submitted in response to an invitation for bids or request for proposals. When the Airports Authority intends to reserve its right to reject all bids or proposals, the solicitation will expressly state that intent. [FTA C 4220.1F, Ch. VI, paras. 2g and 8.c]



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### ~~10.6.9~~10.6.3 Cost and Price Analysis

The Contracting Officer will perform a cost or price analysis in connection with each procurement action, including contract modifications. The method and degree of this analysis will depend on the facts and circumstances surrounding the procurement. However, in every procurement, as a starting point, an independent cost estimate (ICE) will be made before receiving bids or proposals. (Note: The FTA identifies a number of benefits associated with ICEs.

Establishing a cost estimate using a method independent of the prospective bidders or offerors and in advance of their submissions ensures a clear basis for the Contracting Officer's determination that the benefits of the procurement warrant its cost. An ICE prepared when a project is first undertaken can alert all involved that the project had grown beyond the scope originally intended. An ICE also can provide essential information for procurement planning and for determining which procurement procedures apply to the project (e.g., if the cost estimate exceeds \$100,000, many additional procurement and Federal requirements are triggered). Further, an ICE can be helpful in analyzing the submitted cost or price. The estimate alone may, if prepared with sufficient detail and reliability, be sufficient to determine whether the submitted cost or price is reasonable, and will at least supplement other data used in the cost or price analysis. [BPPM Ch. 2, para. 2.3.2]) [FTA C 4220.1F, Ch. VI, para. 6]

#### ~~10.6.9.1~~10.6.3.1 Cost Analysis.

The Contracting Officer will perform a cost analysis whenever a price analysis will not provide sufficient information or otherwise be sufficient to determine the reasonableness of the contract cost. A cost analysis must be performed in the following cases: (i) when the offeror or offerors submit elements (e.g., labor hours, overhead, materials, and so forth) of the estimated cost (such as in professional consulting and A&E contracts); (ii) when price competition is inadequate; (iii) when only a sole source is available, including contract modifications and change orders. A cost analysis will not be performed when the reasonableness of the proposed contract price can be determined based on catalog or market prices of

commercial products sold in substantial quantities to the general public or based on prices set by law or regulation.

In performing cost analyses, the Contracting Officer will be guided by the following:

- (1) Federal Cost Principles. Federal cost principles contain many requirements about the allowability and allocability of costs.
- (2) Indirect Cost Rates. For contracts other than A&E contracts, if the contractor does not have an approved Government indirect cost rate agreement, the contract's dollar value will determine how an indirect cost rate is verified as follows:
  - (a) Contracts of \$5 Million or Less. Indirect cost rates may be based on the audit recommendations of the contractor's certified public accountant, on indirect cost information in the contractor's annual statement to its shareholders, or owners, or on the contractor's rates that have been accepted by other governmental agencies within the prior six months.
  - (b) Contracts Exceeding \$5 Million. Indirect cost rates must have been verified by the Defense Contract Audit Agency, another Federal cognizant audit agency, or an accounting firm approved by the Federal Government to perform audits for the Federal Government.
- (3) Profit. The Contracting Officer will negotiate profit as a separate element of the cost for each contract in which there has been no price competition, and in all acquisitions in which a cost analysis is performed. To establish a fair and reasonable profit, the Contracting Officer will consider the complexity of the work to be performed, the risk undertaken by the contractor, the contractor's investment, the amount of subcontracting, the quality of the contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.

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[FTA C 4220.1F, Ch. VI, para. 6.a]

#### ~~10.6.9.2~~10.6.3.2 Price Analysis.

When the Contracting Officer determines that competition has been adequate, he or she will perform a price analysis, rather than a cost analysis, to determine the reasonableness of the proposed contract price. The price analysis for micro-purchases and small purchases may be limited. [FTA C 4220.1F, Ch. VI, para. 6.b]

#### ~~10.6.9.3~~10.6.3.3 Guidance on Cost and Price Analysis.

As recognized by the FTA, a Contracting Officer may have difficulty obtaining the information necessary to conduct a proper cost or price analysis and, in that situation, will need the kind of flexibility that is provided to Federal contracting officers when performing the cost or price analysis. When this is the case, the Contracting Officer may use the following resources as guidance in preparing the cost or price analysis:

- (1) FTA's "Best Practices Procurement Manual," Chapter 5,
- (2) The National Transit Institute Course, "Cost or Price Analysis and Risk Assessment,"
- (3) Pricing Guide for FTA Grantees, FTA Web Site: [http://www.fta.dot.gov/documents/Helpline\\_Price\\_Guide.doc](http://www.fta.dot.gov/documents/Helpline_Price_Guide.doc),
- (4) FAR Part 31, Contract Cost Principles and Procedures, and
- (5) Defense Contract Audit Agency Audit Manual. See, the DCAA Web site: <http://www.dcaa.mil/>.

(Note: Some provisions of FAR Part 31 and the Defense Contract Audit Agency Audit Manual may be inapplicable to the Airports Authority because they are based on provisions of Federal law that do not apply to the Airports Authority.)

[FTA C 4220.1F, Ch. VI, para. 6.c]

### ~~10.6.10~~10.6.4 Evaluations

General. When evaluating bids or proposals submitted, the Airports Authority will consider all evaluation factors specified in the solicitation documents, and will evaluate the bids or proposals only on those evaluation factors. The Contracting Officer may not modify the evaluation factors after bids or proposals have been submitted without re-opening the solicitation.

Options. In awarding the contract that will include options, the following standards apply:

- (1) Evaluation Required. In general, the Contracting Officer will evaluate bids or proposals for any option quantities or periods contained in a solicitation if the Airports Authority may exercise those options after the contract is awarded.
- (2) Evaluation Not Required. The Contracting Officer need not evaluate bids or offers for any option quantities or periods when the Contracting Officer determines that such evaluation would not be in the best interests of the Airports Authority (e.g., when it is reasonably certain that funds will not be available to permit an exercise of the option).

Evaluators. In addition to evaluators with experience in technical or public policy matters related to the procurement, other evaluators may also include auditors and financial experts when the Contracting Officer determines their participation would be necessary or helpful. [FTA C 4220.1F, Ch. VI, para. 7]

### ~~10.6.11~~10.6.5 Contract Award

The following provisions apply to contract awards.

#### ~~10.6.11.1~~10.6.5.1 Award to Other Than the Lowest Bidder or Offeror.

The Airports Authority may award a contract to other than the lowest bidder if the award furthers an objective consistent with the purposes of 49 U.S.C. Chapter 53, including improved long-term operating

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efficiency and lower long-term costs. The Airports Authority may also award a contract to other than the offeror whose proposal has the lowest price or cost when this is stated in the evaluation factors of the solicitation. In both cases the Contracting Officer will include a statement in the solicitation document reserving the right to award the contract to other than the low bidder or offeror. [FTA C 4220.1F, Ch. VI, para. 8.a]

10.6.11.210.6.5.2 Award Only to a Responsible Bidder or Offeror.

The Contracting Officer will only award a contract to a “responsible” contractor possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract. Responsibility is a procurement issue that is determined by the Contracting Officer after receiving bids or proposals and before making the contract award. To designate a prospective contractor “responsible,” the Contracting Officer, at a minimum, will determine that the contractor, in addition to being otherwise qualified and eligible to receive the contract award under applicable laws and regulations, satisfies the following:

- (1) Integrity and Ethics. Has a satisfactory record of integrity and business ethics;
- (2) Debarment and Suspension. Is neither debarred nor suspended from Federal programs;
- (3) Affirmative Action and DBE. Is in compliance with the Airports Authority’s and the FTA’s affirmative action and Disadvantaged Business Enterprise requirements;
- (4) Public Policy. Is in compliance with the public policies of the Federal Government;
- (5) Administrative and Technical Capacity. Has the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them;

- (6) Licensing and Taxes. Is in compliance with applicable licensing and tax laws and regulations;
- (7) Financial Resources. Has, or can obtain, sufficient financial resources to perform the contract;
- (8) Production Capability. Has, or can obtain, the necessary production, construction, and technical equipment and facilities;
- (9) Timeliness. Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments; and
- (10) Performance Record. Is able to provide a:
  - (a) Current Performance. Satisfactory current performance record; and
  - (b) Past Performance. Satisfactory past performance record in view of its record of long-time performance or the record of performance of a predecessor entity, including:

Sufficient Resources. Key personnel with adequate experience, a parent firm with adequate resources and experience, and key subcontractors with adequate experience and past performance;

Adequate Past Experience. Past experience in carrying out similar work with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations as described in the solicitation document; and

Any Past Deficiencies as Basis for Non-Responsible Determination. A prospective contractor that is or recently has been seriously deficient in past contract performance will be presumed to be non-responsible, unless the Contracting Officer determines that the circumstances causing the deficiency were properly beyond the contractor’s control, or

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that the contractor has taken appropriate corrective action. Past failure to apply sufficient tenacity, perseverance, and effort to perform acceptably is strong evidence of non-responsibility. Also, failure to meet the quality requirements of a contract is a significant factor to be considered in determining past performance. When determining whether a prospective contractor is non-responsible based on deficient past contract performance, the Contracting Officer will consider the number of the contractor's contracts involved and the extent of the deficient performance in each contract.

Fixed Guideway Projects. Before entering into a full funding contract for the construction of a fixed guideway project, the Airports Authority will consider the prospective contractor's past performance, if any, in estimating costs and ridership as reported in the "Contractor Performance Assessment Reports".

The preceding conditions are not intended to limit the ability of the Airport Authority to shortlist offerors under the two-step design-build procurement procedures set forth in Paragraph 10.4.6.5.

[FTA C 4220.1F, Ch. VI, para. 8.b]

#### ~~10.6.11.3~~ 10.6.5.3 Pre-Negotiation Memorandum

Pre-negotiation Memorandum. The Contracting Officer will prepare some form of pre-negotiation document for all negotiations or discussions with offerors participating in a competitive proposals procurement. The extent of detail and the content of this memorandum will depend on the magnitude and complexity of the negotiations or discussions. The pre-negotiation memorandum will be prepared with an eye toward achieving the following benefits:

- (1) It will facilitate effective cost and/or price analysis.
- (2) It will enhance negotiations with the offeror by revealing those areas where the costs or price

needs to be questioned and discussed with the offeror.

- (3) It will document the file with an explanation of the basis for the contract price, and it will be used to provide a history of the procurement
- (4) It will afford the Contracting Officer a method of management review and approval of the Airports Authority's strategy for the negotiations.

[BPPM, Ch. 5, para. 5.2]

#### ~~10.6.11.4~~ 10.6.5.4 Extent and Limits of Contract Award.

The selection of a contractor to perform certain work on a project does not, by itself, constitute a sole source selection of the contractor's wholly owned affiliates to perform other work in connection with the project. [FTA C 4220.1F, Ch. VI, para. 8.d]

## 10.7 CONFLICTING PROVISIONS

### ~~10.7.7~~ 10.7.1 Introduction

Certain provisions in earlier chapters of this Manual are in conflict with FTA contracting requirements and, therefore, are inapplicable to the acquisitions and procurements to which this Chapter 10 applies. This section identifies in brackets the sections of the Manual that contain these conflicting provisions and indicates the nature of the conflict. In procuring property and services under Chapter 10, the Airports Authority will not rely on or otherwise utilize these conflicting provisions. To the extent the identified sections contain conflicting provisions, the sections are inapplicable to acquisitions or procurements governed by this chapter.

### ~~10.7.8~~ 10.7.2 Full and Open Competition [1.1]

The FTA requirement for Full and Open Competition applies to all procurements. However, smaller procurements, which are less than the Federal simplified acquisition threshold (currently \$100,000), may be treated as small purchases using relatively

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simple and in formal small purchase procedures. Procurements over \$100,000 must use formal procurement procedures allowing for Full and Open Competition to the maximum extent possible. [FTA C 4220.1F, Ch. VI, para. 3.b]

### ~~10.7.9~~**10.7.3 Limited Competition** **[1.2.1]**

The FTA does not allow for Categorical Exceptions to Full and Open Competition. Each procurement that seeks to limit competition must stand on its own merits. The opportunity to participate in solicitations should be made available to all responsible firms. However, in certain circumstances, the provisions in this Chapter 10 allow for other than Full and Open Competition and these provisions may be applicable to some of the procurements covered by the Categorical Exceptions in Paragraph 1.2.1. [FTA C 4220.1F, Ch. VI, para. 3.i]

### ~~10.7.10~~**10.7.4 Airport Security** **Controlled Distribution RFP** **[1.2.2]**

It is the FTA's position that Full and Open Competition means that all responsible sources are permitted to compete, although the FTA does allow the Airports Authority to prequalify people, firms and property (including for airport security services) if several conditions are met. See Paragraph 10.6.1(3). [FTA C 4220.1F, Ch. VI, para. 1.c]

### ~~10.7.11~~**10.7.5 Utility Services and** **Supply [1.2.3]**

In the past many utility services were available only from a single source supplier. However, with deregulation some of these services may be available from multiple suppliers. Electrical distribution may still be controlled by a single source supplier whereas the electricity itself may be available from multiple suppliers. Use of the provisions in this Chapter 10 for other than Full and Open Competition may be applicable to some utility services and supply procurements. [FTA C 4220.1F, Ch. VI, para. 3.i]

### ~~10.7.12~~**10.7.6 Government** **Purchasing Agreements [1.2.4]**

The FTA encourages use of State and local intergovernmental agreements for procurements of property or services. [FTA C 4220.1F, Ch. V, para. 4]

Federal laws restrict buying from Federal Supply Schedules to acquiring information technology (IT) and to purchasing products and services to facilitate recovery from a major disaster. [FTA C 4220.1F, Ch. V, para. 6.b]

When obtaining property or services using government purchasing agreements, the Airports Authority will ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the Airports Authority's purchase documents. When buying from these schedules, the Airports Authority will obtain a Buy America certification before entering into the purchase order. If the product to be purchased is not Buy America compliant, the Airports Authority will obtain a waiver from the FTA before proceeding. [FTA C 4220.1F, Ch. V, paras. 4.b and 5.c]

### ~~10.7.13~~**10.7.7 Airline Tenant Procured** **Projects [1.2.5]**

The FTA requires that when a Recipient uses another entity (government or private) to procure goods or services for the Recipient, FTA procurement requirements, including required clauses, must be passed through to and applied by that procuring entity.

### ~~10.7.14~~**10.7.8 Proprietary** **Equipment/Software [1.2.6]**

While the FTA does not have categorical exemptions, proprietary equipment and software may be procured using sole source procedures, if the procurement qualifies. See the sole source requirements in Paragraph 10.4.6.9(2). [FTA C 4220.1F, Ch. VI, para. 3.i(1)(b)]



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### ~~10.7.15~~**10.7.9 Advertisement of Contracting Opportunities [1.56(5)]**

The FTA requires that solicitations over \$100,000 be conducted using formal procurement methods (sealed bids or competitive proposals). Both of these methods require that the solicitations be publicly advertised. [FTA C 4220.1F, Ch. III, paras. 3.c(2)(a) and 3.d(2)(a)]

### ~~10.7.16~~**10.7.10 Single Response to a Solicitation [2.2.5]**

In order to determine fair and reasonable pricing when a single response is received from a solicitation, the FTA requires that a cost analysis be performed to determine the reasonableness of the proposed contract price, unless the reasonableness of the proposed price can be determined based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. [FTA C 4220.1F, Ch. VI, para. 6.a]

### ~~10.7.17~~**10.7.11 Evaluation Criteria – Price Only [2.2.8]**

The FTA expects that contracts awarded based on price and price-related factors only will be solicited using the sealed bids procurement method unless discussions will be held with offerors. [FTA C 4220.1F, Ch. VI, para. 3.c(1)(d)]

### ~~10.7.18~~**10.7.12 Evaluation Criteria – Both Price and Technical [2.2.9]**

See Paragraph 10.4.6.5, Two Step Procurement Procedures.

### ~~10.7.19~~**10.7.13 Evaluation Criteria – Technical Only [2.2.10]**

For FTA-funded procurements, this section may apply only to Architect-Engineer Services, as defined by the Brooks Act. The grantee must select the best-qualified proposal and cost is not a factor. [FTA 4220.1F, Ch.

IV, para. 2.h; see also Paragraph 10.4.6.6. This method cannot be used for financial, audit, or legislative professional services, as stated in Paragraph 2.2.10.

The FTA expects that contracts resulting from the competitive proposals procurement method will be awarded to the responsible offeror whose proposal is most advantageous to the Airports Authority's program with price and other factors considered, and that price will be one or more of the evaluation criteria. [FTA C 4220.1F, Ch. VI, para. 3.d(2)(e)]

### ~~10.7.20~~**10.7.14 Determination of Responsibility [2.4.6]**

Prior to awarding any third party contract funded by the FTA, the Airports Authority shall first determine that the selected contractor is capable of successfully performing under the terms and conditions of the proposed contract. The Airports Authority is required to consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources, including information reported in FTA's required Contractor Performance Assessment Reports. [FTA C 4220.1F, Ch. IV, para. 2a(1)]

### ~~10.7.21~~**10.7.15 Construction Contracting Approach [2.7.1]**

The FTA, relying on the Common Grant Rule, states a preference for the sealed bids procurement method when acquiring construction services, unlike the Airports Authority's which states a preference for the competitive proposals procurement method. [FTA C 4220.1F, Ch. VI, para. 2.c(1)]

### ~~10.7.22~~**10.7.16 Design-Build Contracts [2.7.5]**

For FTA-assisted design-build solicitations, because both design and construction are included in a single procurement, the FTA expects the procurement method appropriate for the services having the greatest cost to be used, even though other necessary services would not typically be procured by that method, and it defines

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the process to be used in determining the method to be used. (See Paragraph 10.4.6.8.)

[FTA C 4220.1F, Ch. VI, para. 3.h(1)]

### ~~10.7.23~~10.7.17 **Limited Competition Proposals [2.9]**

The FTA requires that Recipients normally provide for Full and Open Competition when soliciting sealed bids or competitive proposals. However, under certain circumstances, Recipients may conduct procurements with ~~lessother~~ than ~~Fullfull~~ and Open Competition. (See Paragraph 10.4.6.9.) [FTA C 4220.1F, Ch. VI, para. 3.i]

### ~~10.7.24~~10.7.18 **Sole Source Negotiation [2.10]**

The FTA requires that Recipients provide for Full and Open Competition when soliciting sealed bids or competitive proposals. However, under certain circumstances, Recipients may conduct procurements with ~~lessother~~ than ~~Fullfull~~ and Open Competition. (See Paragraph 10.4.6.9.) [FTA C 4220.1F, Ch. VI, para. 3.i]

### ~~10.7.25~~10.7.19 **RFQ/Purchase Orders [2.12]**

For procurements under the Federal simplified acquisition threshold (currently \$100,000), see Paragraph 10.4.6.2. [FTA C 4220.1F, Ch. VI, para. 3.b]

For procurements \$100,000 and over, see Paragraph 10.4.6.3. [FTA C 4220.1F, Ch. VI, para. 3.c]

### ~~10.7.26~~10.7.20 **Purchase Order/Blanket Purchase Order [2.12.1]**

Blanket purchase orders may be used for FTA funded purchases of \$3,000 and under (micro-purchases) when a determination is made that the purchase price is fair and reasonable and the basis for that determination is documented. Purchases over \$2,000 for construction

must comply with Davis-Bacon prevailing wage requirements. [FTA C 4220.1F, Ch VI, para. 3.a]

### ~~10.7.27~~10.7.21 **Legal, Financial, Audit & Legislative Representation Services [2.13.2]**

The FTA does not allow for Categorical Exceptions to Full and Open Competition. Each procurement that seeks to limit competition must stand on its own merits. The opportunity to participate in solicitations must be made available to all responsible firms. However, in certain circumstances, the provisions of this Chapter 10 allow for ~~lessother~~ than ~~Fullfull~~ and Open Competition, and these procedures may be applicable to some of the procurements addressed in Paragraph 2.13.2. [FTA C 4220.1F, Ch. VI, para. 3.i]

### ~~10.7.28~~10.7.22 **Contract Types and Procedures [Chapter 3]**

The Common Grant Rule expressly prohibits the use of the “cost plus a percentage of cost” and “cost plus a percentage of construction cost” contract types. [FTA C 4220.1F, Ch. VI, para. 2.c(2)(a)]

### ~~10.7.29~~10.7.23 **Cost Plus a Percentage of Cost Contract [Chapter 3]**

The FTA specifically prohibits the “cost plus percentage of cost” contract type. [FTA C 4220.1F, Ch. VI, para. 2c(2)(a)]

### ~~10.7.30~~10.7.24 **Fixed-Unit-Price Contracts [3.2]**

The FTA considers this type of contract to be an indefinite-delivery-indefinite-quantity contract (See Paragraph 10.7.23.) The FTA expects Recipients to limit its procurements to the amount of property and services required to meet their reasonably expected needs, and to be able to justify the quantities they procure. Having written statements of anticipated material requirements in the contract files may prove

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helpful in providing this justification. [FTA C 4220.1F, Ch. V, para. 7.a(2)]

### ~~10.7.34~~**10.7.25** Purchase of Goods Under Indefinite Delivery Contracts [3.9]

The FTA expects that if supplies or services are solicited, competed, and awarded through the use of an indefinite-delivery-indefinite-quantity contract, the solicitation and the contract award will contain both a minimum and maximum quantity that represent the Airports Authority's reasonably foreseeable needs. [FTA C 4220.1F, Ch. V, para. 7.a(2)]

### ~~10.7.32~~**10.7.26** Litigation Bonds [3.11.9]

Although not specifically addressed in its bonding requirements for construction contracts, the FTA may construe a litigation bond as "excessive bonding" and restrictive of competition. [FTA C 4220.1F, Ch. IV, para. 2.i(1)(f)]

### ~~10.7.33~~**10.7.27** Options May Extend or Change Performance [3.11.23]

The FTA requirements provide that, if a contract has one or more options and those options were not evaluated as part of the original contract award, a Recipient's exercise of the options after contract award will result in a sole source award. The requirements further provide that, in order to be evaluated, the options must be priced in the original contract.

The exercise of an option after a Recipient has negotiated a lower or higher price for the option quantities will also result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or the price results from Federal actions that can be reliably measured. [FTA C 4220.1F, Ch. V, para. 7.a(1)(c)]

### ~~10.7.34~~**10.7.28** Reopening a Closed Contract [5.4.5]

Contract closeout is addressed in the Common Grant Rule, 49 CFR Part 18.50 and in the Best Practices Procurement Manual. Although the reopening of closed contracts is not specifically addressed in any applicable law or regulation, the FTA does not recommend that Recipients reopen a closed contract for which there has been Federal assistance.

### ~~10.7.35~~**10.7.29** Correction of Mistakes Alter Award [5.3]

The FTA has established requirements and restrictions for contract changes; these provisions affect the correction of mistakes after award. [FTA C 4220.1F, Ch. V, para. 7; and Ch. VII, para. 2]

### ~~10.7.36~~**10.7.30** Payment Considerations [5.5]

The FTA allows Recipients to use FTA assistance to support progress payments, provided Recipients obtain adequate security for those payments and have sufficient written documentation to substantiate the work for which payments are requested. (Examples of such security are provided in Paragraph 10.5.2.5(3).) [FTA C 4220.1F, Ch. IV, para. 2.b(5)(c)]

### ~~10.7.37~~**10.7.31** Prepayments [5.5.3]

The FTA term for "prepayments" is "advance payments." Requirements applicable to the making of such payments are set out in Paragraph 10.5.2.5(2). [FTA C 4220.1F, Ch. IV, para. 2.b(5)(b)]

### ~~10.7.38~~**10.7.32** Subcontractor Non-Payment [5.6]

While there is no privity of contract between the Recipients and any subcontractor, Federal regulations (see 49 CFR Part 26.29, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs) contain

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the following requirements relating to the payment and non-payment of subcontractors:

- (1) “You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.”
- (2) “You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:
  - (a) “You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.”
  - (b) “You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.”
  - (c) “You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.”

These requirements apply to all contractors and subcontractors, both DBE and non-DBE.

**10.7.3910.7.33 Termination for Default [5.9]**

The FTA requires that all contracts exceeding \$10,000 contain both a termination for cause and termination

for convenience provision. [FTA C 4220.1F, Ch. IV, para. 2.b(6)(b)4]

**10.7.4010.7.34 Concession Contracts [Chapter 6]**

For the avoidance of doubt, the Airports Authority concession contracts described in Chapter 6 are not deemed to be “Revenue Contracts” under this chapter is defined in Paragraph 10.1.13. [FTA C 4220.1F, Ch. II, para. 2.b(4)]

**10.7.4110.7.35 Protests [7.3]**

The FTA has developed an appeals process for reviewing the Airports Authority's decision in procurement protests.

Only an “interested party” qualifies for FTA review of its appeal.

The protester must exhaust its administrative remedies by pursuing the protest procedures in Chapter 7 of this Manual before appealing a protest decision to the FTA.

The protester must deliver its appeal to the FTA Regional Administrator within five (5) working days of the date on when the protester has received actual or constructive notice of the final decision in its protest or has identified other grounds for appeal, such as the Airports Authority's failure to comply with its protest procedures or its refusal to review the protest.

The FTA will limit its review of protest appeals to:

- (1) Whether the Airports Authority has failed to comply with its protest procedures or its refusal to review the protest.
- (2) At the discretion of the FTA, whether the Airports Authority, in the course of the procurement, has violated a Federal law or regulation.

The FTA requires Recipients to notify it when they receive a protest in a procurement financed with Federal assistance and to keep the FTA informed about

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the status of the protest. [FTA C 4220.1F, Ch. VII, para. 1.a(2)(a)]

### ~~10.7.42~~10.7.36 **Disputes [8.1]**

The FTA requires Recipients to notify it of their contract disputes and to keep it informed about the status of the disputes. [FTA C 4220.1F, Ch. VII, para. 3.a(1)]

### ~~10.7.43~~10.7.37 **FTA Contract Prohibitions**

The FTA prohibits a number of solicitation features, as provided below (see also Paragraph 10.6.2.1(4)). To the extent such features are permitted by other provisions of this Manual, those other provisions are inapplicable to procurements that are subject to this Chapter 10. [FTA C 4220.1F, Ch. VI, para. 2.a(4)]

~~10.7.43.1~~10.7.37.1 **Excessive Qualifications.** See Paragraph 10.6.2.1(4)(a). [FTA C 4220.1F, Ch. VI, para. 2.a(4)(a)]

~~10.7.43.2~~10.7.37.2 **Unnecessary Experience.** See Paragraph 10.6.2.1(4)(b). [FTA C 4220.1F, Ch. VI, para. 2.a(4)(b)]

~~10.7.43.3~~10.7.37.3 **Improper Qualification.** See Paragraph 10.6.2.1(4)(c). [FTA C 4220.1F, Ch. VI, para. 2.a(4)(c)]

~~10.7.43.4~~10.7.37.4 **Retainer Contracts.** See Paragraph 10.6.2.1(4)(d). [FTA C 4220.1F, Ch. VI, para. 2.a(4)(d)]

~~10.7.43.5~~10.7.37.5 **Excessive Bonding.** See Paragraph 10.6.2.1(4)(e). [FTA C 4220.1F, Ch. VI, para. 2.a(4)(e)]

~~10.7.43.6~~10.7.37.6 **Brand Name Only.** See Paragraph 10.6.2.1(4)(f). [FTA C 4220.1F, Ch. VI, para. 2.a(4)(f)]

~~10.7.43.7~~10.7.37.7 **In-State or Geographical Restrictions.** See Paragraph 10.6.2.1(4)(g). [FTA C 4220.1F, Ch. VI, para. 2.a(4)(g)]

~~10.7.43.8~~10.7.37.8 **Organizational Conflict of Interest.** See Paragraph 10.6.2.1(4)(h). [FTA C 4220.1F, Ch. VI, para. 2.a(4)(h)]

~~10.7.43.9~~10.7.37.9 **Restraint of Trade.** See Paragraph 10.6.2.1(4)(i). [FTA C 4220.1F, Ch. VI, para. 2.a(4)(i)]

~~10.7.43.10~~10.7.37.10 **Arbitrary Action.** See Paragraph 10.6.2.1(4)(j). [FTA C 4220.1F, Ch. VI, para. 2.a(4)(j)]



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## **APPENDIX A AIRPORTS AUTHORITY DEFINITIONS**

Authority Debarment Judge Decision (ADJD) -- Decision made by the Authority Debarment Judge whether or not to debar a contractor.

Airport Improvement Program (AIP) -- A Federal Aviation Administration program established pursuant to 49 U.S.C. 47101 et seq. which provides federal grant funding for selected Airport improvements.

Airports Authority Debarment Judge -- (ADJ). An individual selected by the Airports Authority's General Counsel from an impartial source, meaning current or former employees of the suspension and debarment organizations of federal, state and/or local governments or public entities, the American Arbitration Association, the Federal Mediation and Conciliation Service, former federal or state judges or other similar individuals, to serve on one or more suspension or debarment matters and/or for a fixed period of time to handle suspension and debarment matters.

Amendment -- Document that is issued to change a solicitation.

Airports Authority -- Metropolitan Washington Airports Authority.

Best and Final Offer (BAFO) -- An opportunity which may be extended to offerors within the competitive range to submit a revised offer.

Bid -- An offer of specific goods or services at a specified price, for a specified period of time; generally relates to competitively bid contracts which are awarded based on price. A bid is a binding offer to perform.

Bidder -- Person or firm that submits a bid in response to an Invitation for Bids (IFB). Note, the term "offeror," when used without the term "bidder" and when the context warrants, includes both bidders submitting responses to IFBs and offerors submitting responses to RFPs.

Blanket Purchase Order (BPO) -- An order between the Airports Authority and an external source that allows

the Airports Authority to order future goods or services on a repetitive basis, and to be billed for the goods or services received on an as ordered basis.

Call Orders -- Type of indefinite delivery task contract that because of its low cost and non-complex nature, can be afforded cost-efficient expedited handling.

Capital Construction Program (CCP) -- The Airport Authority's major construction program involving capital improvements at both airports.

Capitalized Item -- Items that have an acquisition cost of \$10,000 or more, recorded individually in the property record and in the appropriate General Ledger account so that their value may be depreciated separately. Examples are general/special purpose vehicles, photo copiers, radio equipment, computer equipment, snowplows, runway friction testing equipment, and leased equipment (more than 30 day period).

Certificate of Appointment -- The document that authorizes an individual to execute contractual documents subject to any limitations set forth in the certificate.

Certification -- The process by which a business enterprise is determined to be an eligible Disadvantaged Business Enterprise (DBE) under 49 CFR Part 23 and Part 26 as amended or a Local Disadvantaged Business Enterprise (LDBE) under the Airports Authority's LDBE Program.

Claim -- A written demand or assertion by one of the contracting parties seeking, as a matter of right, the payment of money, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. An invoice or other request for payment that is not in dispute when submitted is not a claim although it may be converted into one if the amount is disputed or it is not acted upon in a reasonable time.

Competitive Range -- After submittal and evaluation of proposals, the Competitive Range is comprised of

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those offerors who submitted the most highly rated proposals have a reasonable chance to be awarded the contract.

**Conforming Offer** -- An offer that complies in all material respects with the Airports Authority's solicitation. See Paragraph 2.2.6 for additional information.

**Construction** -- Construction, demolition, alteration, or repair of buildings, structures, or other real property. For purposes of this definition, the terms "buildings, structures, or other real property" include but are not limited to improvements of all types, such as bridges, plants, streets, tunnels, sewers, power lines, pumping stations, airport facilities, terminals, and breakwaters. Construction excludes the manufacture, production, furnishing, alteration, repair, or assembling of personal property.

**Contract** -- A mutually binding legal agreement between the Airports Authority and an external source to obtain goods, construction or services under specified terms and conditions. A purchase order or a blanket purchase order when accepted by a vendor, is a type of contract.

**Contracting Officer** -- An individual with formally delegated written authorization to commit the Airports Authority by entering into contracts and other contractual instruments such as modifications, task orders, delivery orders, purchase orders, and blanket purchase orders.

**Contracting Officer's Technical Representative (COTR)** -- An individual possessing technical expertise with respect to the contractual work being performed who has been delegated the responsibility for monitoring contractor performance and supporting the Contracting Officer.

**Contractor** -- An individual or company that has a contract with the Airports Authority to provide goods, construction, or services; synonymous with supplier and vendor.

**Day** -- Refers to a calendar day unless otherwise stated.

**Debarment** -- An exclusion from contracting and subcontracting with the Airports Authority for a specified period of time.

**Determination to Debar (DTD)** -- Formal notification that a contractor has been debarred as of the date of the determination.

**Disadvantaged Business Enterprise (DBE)** -- A small business concern that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals. In addition, a DBE firm's management and daily business operations must be controlled by one or more of the socially and economically disadvantaged individuals who own it and who are citizens or lawful permanent residents of the United States. See Paragraph 4.2 for a more complete definition.

**Dispute** -- A dispute exists between the contracting parties when they have been unsuccessful in resolving a claim submitted by one party.

**Evaluation Committee (EC)** -- Committee established when required to evaluate technical evaluation criteria.

**Free On Board (FOB)** -- This term is used in conjunction with a physical point to determine the point at which title for goods passes to the buyer.

**Free On Board At Origin (FOB Origin)** -- The vendor places the goods on the conveyance by which they are to be transported and the title passes to the Airports Authority when the goods are loaded.

**Free On Board At Destination (FOB Destination)** -- The vendor is responsible for delivery of the goods to the specified delivery destination. Title passes to the Airports Authority when the goods arrive at that location (e.g., the warehouse receiving dock).

**Invitation for Bids (IFB)** -- The solicitation document used to solicit advertised sealed bids for goods, construction, or services.

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Local Disadvantaged Business Enterprise (LDBE) -- A business that is independently owned and operated; not dominant in its field of operation; is a small business under the Airports Authority's small business standards; and physically located within a 100 mile radius of the District of Columbia's zero mile marker. See Paragraph 4.3 for a more complete definition.

Materials Management Division -- The office at each Airport, which reports to the Airport Administrative Department, and is authorized and responsible for purchasing services and property subject to an overall limit currently set at \$50,000 or less. That limit is subject to change and there are exceptions to the limits as described in Paragraph ~~1.6.21.4.2~~.

Metropolitan Washington Airports Authority (Airports Authority) -- A public body corporate and politic that is charged with the protection, promotion, operation and maintenance of Ronald Reagan Washington National and Washington Dulles International airports.

May -- Denotes the permissive. However, the words "no person may..." mean that no person is required, authorized, or permitted to do the act described.

Modification -- Any written change to a contract.

Negotiated Contract -- A contract awarded as a result of evaluation or negotiation after receipt of proposals, or as a result of the receipt of best and final offers.

Non-Capitalized Assets -- Items which have an acquisition cost of \$2,500 or more but less than \$10,000, and are recorded individually in the property record for property management and control purposes only. Examples are special purpose/systems furniture, medical/dental equipment, household furniture/appliances, special purpose vehicles, marine equipment, shop equipment/tools, commissary/kitchen equipment, emergency readiness equipment, training equipment, landscaping/lawn equipment, and leased equipment (more than 30-day period).

Non-Conformance -- Exists when a proposal includes a substantial deviation that goes to the substance of the offer by altering the price, quantity, quality, delivery or performance.

Notice of Pending Debarment (NPD) -- Notification to a contractor that debarment is being considered.

Offer -- A response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. This is a generic term that includes proposals that are submitted in response to an RFP and bids that are submitted in response to an IFB.

Offeror -- Person or firm that submits an offer in response to an Airports Authority contract solicitation. When used together with the term "bidder," the term "offeror" generally refers to a person or firm responding to a Request for Proposals.

Owner Controlled Wrap-Up Insurance Program (OCWIP) -- An Airports Authority provided insurance program which provides coverage for enrolled construction contractors while performing work under an Airports Authority contract on Airports Authority owned or leased property.

Operation and Maintenance (O & M) -- A contract for O & M services obligates the contractor to operate and maintain the system in accordance with the contract statement of work.

Procurement System -- The established policies, procedures, and personnel that are used to conduct procurement activities for the Airports Authority.

Proposal -- An offer of specific goods or services at a specified price, for a specified period of time; generally relates to competitive proposal process by which contracts are awarded based upon an evaluation of the proposal against stated evaluation criteria. A proposal is a binding offer to perform.

Protest -- A protest is a written objection by an interested party to a solicitation, proposed award, or actual award of a contract.

Purchase Order (PO) -- An Airports Authority contractual instrument with specified terms and conditions to purchase goods and services issued to the supplier or vendor upon receipt of quotations of price and delivery schedule.

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**Purchasing Agent** -- An individual with formally delegated written authorization to commit the Airports Authority up to specified dollar levels by entering into contractual instruments such as purchase orders, blanket purchase orders, modifications, task orders, and delivery orders.

**Quotation (Quote)** -- A vendor's written or verbal statement of a specific price for goods or services, contingent upon conditions as stated.

**Real Property Items** -- Items which will be installed into and become part of a real property facility such as venetian blinds, lighting fixtures or a sink.

**Requisition** -- A funding and authorization document used to request all goods and services, to include all personal property items regardless of their cost.

**Request for Proposals (RFP)** -- A solicitation document used in negotiated procurements seeking proposals that conform with the solicitation from responsible offerors.

**Request for Qualifications Information (RFQI)** -- A document or other inquiry soliciting technical or professional qualifications from Architectural/Engineering firms or prospective Concessionaires, design-build firms, or other consultants as allowed by this Manual.

**Request for Quotations (RFQ)** -- A document or other inquiry soliciting price and/or delivery information for goods and services.

**Requestor** -- An individual, office or subdivision within the Airports Authority who requests the purchase of goods, construction, or services by completing a Requisition.

**Responsible Offeror** -- Any offeror who has the capability in all respects to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance. See Paragraph 2.4.6 for additional information.

**Service Contract** -- A contractual document that directly engages the time and effort of a vendor whose

primary purpose is to perform an identifiable task rather than to furnish an end item of supply. Airport Purchasing Offices shall use purchase orders or BPOs as the contractual instrument to contract for specific services within their purchasing authority. A service contract or other contractual instrument can cover services performed by either professional or nonprofessional personnel whether on an individual or organizational basis. Some of the areas in which service contracts are found include the following:

- (1) Maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of goods, systems, or equipment
- (2) Routine recurring maintenance of real property
- (3) Housekeeping janitorial and base services
- (4) Consulting services
- (5) Engineering and technical services
- (6) Operation of Airports Authority owned equipment, facilities, and systems
- (7) Communications services
- (8) Transportation and related services

**Set-Aside** -- When acquisitions are reserved for award to a predefined group or category of suppliers or other contractors.

**Shall** -- Denotes the imperative.

**Solicitation** -- An Invitation for Bids, Request for Proposals, Request for Quotations, or Request for Qualifications Information.

**Specification** -- A description of the technical requirements for goods or services.

**Statement of Work (SOW)** -- Also referred to as Scope of Work or Specifications. This is a description of the work, goods, or service being procured.

**Supplier** -- An individual or company that sells goods or services; synonymous with vendor and contractor.

**Suspension** -- An exclusion from contracting or subcontracting with the Airports Authority for a reasonable period of time prior to the initiation and during the pendency of the debarment process.



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Task Contracts -- These indefinite delivery contracts provide an in-place contractual arrangement with a competitively selected Contractor that is ready, willing and able to undertake a number of jobs, or individual tasks, of the nature described in the contract statement of work.

Unified Certification Program (UCP) -- Once certified by the Virginia UCP, a firm's DBE certification will be accepted by all recipients of U.S. Department of Transportation grant funds within Virginia.

Vendor -- An individual or company that sells goods or services; synonymous with supplier and contractor.

Will -- Denotes an action that is to occur in the future.



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## **APPENDIX B POINTS OF CONTACT**

### ***B.1 PROCUREMENT AND CONTRACTS DEPARTMENT (MA-29)***

Procures goods, services, and construction that involve a total commitment currently set at over \$50,000 for goods and services and for all construction contracts.

Metropolitan Washington Airports Authority  
Procurement and Contracts Department (MA-29)  
1 Aviation Circle  
Washington, DC 20001-6000  
Phone (703) 417-8660

### ***B.2 MATERIALS MANAGEMENT DIVISIONS***

The Materials Management Divisions at Ronald Reagan Washington National and Washington Dulles International Airports procure goods and services that involve a total commitment currently set at \$50,000 or less.

B.2.1 Metropolitan Washington Airports Authority  
Materials Management Division (MA-133)  
Ronald Reagan Washington National Airport  
Washington, DC 20001-4901  
Phone (703) 417-8026

B.2.2 Metropolitan Washington Airports Authority  
Materials Management Division (MA-238)  
Washington Dulles International Airport  
P.O. Box 17045  
Washington, DC 20041-0001  
Phone (703) 572-2920

### ***B.3 CONCESSIONS AND PROPERTY DEVELOPMENT (MA-430)***

Enters into concession contracts for the provision of goods and services to airport users except as noted in B.4 below.

Metropolitan Washington Airports Authority  
Concessions and Property Development Department (MA-430)  
1 Aviation Circle  
Washington, DC 20001-6000  
Phone (703) 417-8755

### ***B.4 AIRPORT ADMINISTRATION DEPARTMENTS***

Enters into concession contracts for ground transportation, rental car, fixed base operation, and parking at the respective airports.

B.4.1 Metropolitan Washington Airports Authority  
Airport Administration Department (MA-130)

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Ronald Reagan Washington National Airport  
Washington, DC 20001-4901  
Phone (703) 417-8022

- B.4.2 Metropolitan Washington Airports Authority  
Airport Administration Department (MA-230)  
Washington Dulles International Airport  
P.O. Box 17045  
Washington, DC 20041-0001  
Phone (703) 572-2905

### ***B.5 EQUAL OPPORTUNITY PROGRAMS DEPARTMENT (MA-410)***

Manages the Airports Authority's Disadvantaged Business Enterprise and Local Disadvantaged Business Enterprise Programs.

Metropolitan Washington Airports Authority  
Equal Opportunity Programs Department (MA-410)  
1 Aviation Circle  
Washington, DC 20001-6000  
Phone (703) 417-8625

### ***B.6 SUBMITTALS OF CONTRACT PROTESTS AND DISPUTES***

For submission of all contract protests and all requests for dispute resolution.

Metropolitan Washington Airports Authority  
Procurement and Contracts Department (MA-29)  
1 Aviation Circle  
Washington, DC 20001-6000

### ***B.7 OFFICES RESPONSIBLE FOR PROTEST REVIEWS***

In specific instances when protest reviews may be requested from the President and Chief Executive Officer or the Board of Directors.

- B.7.1 For the President and Chief Executive Officer -

Metropolitan Washington Airports Authority  
Office of the Chief Executive Officer  
1 Aviation Circle  
Washington, DC 20001-6000

- B.7.2 For the Board of Directors or a committee of the Board of Directors -

Metropolitan Washington Airports Authority  
Secretary, Board of Directors

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1 Aviation Circle  
Washington, DC 20001-6000





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## **APPENDIX C REQUISITION PROCESS**

### **C.1 PROCUREMENT CYCLE**

For planning purposes it is important to understand the step-by-step processes required of the appropriate procurement office since these processes are what determine the duration of the procurement cycle. The length of the cycle may vary dependent upon such factors as (1) complexity of proposed procurement, (2) procurement method (i.e., advertised sealed bidding or negotiated), (3) contract type (i.e., construction, architect-engineer, supply or service), and (4) number of amendments required during the solicitation phase.

Airports Authority requesters must be cognizant of the duration of the procurement cycle and allow sufficient lead time (see table below) from the date the Requisition is submitted to Procurement, to contract award. Although Contracting Officers are constantly searching for ways to streamline the procurement cycle, requesters should recognize that competing higher priority demands may impact actual lead times. The most common delays in the procurement cycle are a result of inadequate definition or subsequent changes to the specifications/description of the items being procured.

<u>Type of Procurement</u>	<u>Days Lead Time</u>
Construction	45-60
Services	45-60
A-E Services	90-120
Supplies (off-the-shelf items)	30-60
Equipment (long-lead items)	45-90

### **C.2 SUBMITTING REQUISITIONS**

Goods, services, property and construction services are purchased in response to Requisitions generated by Airports Authority personnel to support mission requirements. After such Requisitions are properly completed and approved as set forth herein, they become the authorization for commitment of Airports Authority funds.

### **C.3 REQUESTOR FURNISHED INFORMATION**

#### **C.3.1 Contracting Officer's Technical Representative (COTR)**

The vice president requesting a procurement action is responsible for identifying a well qualified COTR for each requested procurement action. The COTR may or may not be involved in developing the statement of work. If technical evaluation criteria are used to evaluate contractor proposals, the COTR is frequently identified as the chairperson for the Evaluation Committee in accordance with Paragraph 2.3. The detailed duties and responsibilities of the COTR are described in detail in Appendix H. In short, during the term of the contract, the COTR will be responsible for ensuring that the contractor performs in accordance with the Airports Authority's contract; also see Paragraphs 5.8.1 and 5.8.2. The COTR will be required to track progress to facilitate processing of contractor invoices and to communicate instances of unacceptable work.

#### **C.3.2 Price Estimate**

The requestor is responsible for establishing a budgetary price estimate or a detailed price estimate for the Requisition. This estimate should be based on experience or by contractor inquiry as necessary. Requestors needing assistance in establishing an estimated price may contact Procurement and Contracts Department or refer to contractors/vendors (see Paragraph 3.11.11). Construction contract estimates generally are prepared by the design A/E. Formal price estimates are "Confidential" for Airports Authority use only. The price estimate may be revised during the negotiations, as necessary, to reflect any changes or clarifications of the scope of work to be performed by the contractor.

#### **C.3.3 Evaluation Criteria**

The requestor should consider whether to recommend use of evaluation criteria (as mentioned in Paragraph

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C.3.1) in addition to price. Any such criteria, listed in order of declining importance, should be submitted with the Requisition so that they may be considered by the Contracting Officer for inclusion in the RFP (see Paragraph 2.2.2). If no additional criteria are submitted, and the Contracting Officer agrees that none are needed, the RFP will be structured so that price is the only evaluation factor.

### **C.3.4 LDBE Participation**

Requestors should also recommend LDBE set-aside participation requirements. If the Requisition is silent on this matter, the Equal Opportunity Programs Department will make specific recommendations.

### **C.3.5 Full Description**

The requestor must obtain all information required to fully describe the goods or specific services to be acquired. This important requirement is further expanded upon in Paragraph C.5, "Specification Guidelines."

## **C.4 COMPETITION GUIDELINES**

The Airports Authority's policy is to achieve, to the maximum extent practicable, full and open competition as described in Paragraph 1.1.

The competition guidelines reflected below are based on total estimated dollar commitment of each procurement action.

### **C.4.1 \$250 and Less**

Items in this category may be purchased using Imprest Fund procedures. Excluded from this category even though they may cost \$250 or less are those items purchased under blanket purchase orders, and personal property items.

### **C.4.2 \$251 Through \$2,500**

Purchasing actions in this category may be effected without competitive quotes as long as the Contracting Officer considers the telephone (voice or fax) solicited price to be reasonable. Published price lists are used as

a point of reference and price comparability for goods and services not previously purchased. The Abstract of Offers form is used to document the analysis. Since there may be no competition in this category, care must be taken to ensure that the Airports Authority is getting a fair discount where that is possible.

These purchases should be distributed equitably among qualified suppliers. If practical, a telephone (voice or fax) quote should be obtained from other than the previous supplier before a repeat order is placed. Items for which there is a recurring need should be considered candidates for a BPO.

### **C.4.3 \$2,501 Through \$10,000**

A minimum of three sources, if available, should be solicited to promote competition and ensure that the purchase is advantageous to the Airports Authority, price and other criteria considered. When there are a large number of sources available, Contracting Officers generally should not solicit more than 10 vendors. This should be more than sufficient to achieve competition. The Contracting Officer should ensure that other vendors on the source list have an equitable opportunity to receive subsequent solicitations.

Quotations may be solicited by telephone. All prospective vendors must be given similar detailed information concerning the product or service being purchased. If the required information is too complex to be transmitted by phone, a written RFQ should be used. Quotes may be submitted by telephone (voice or fax). However, if necessary, written (hand signed) responses may be required.

An analysis of quotes received will be accomplished and documented on the Abstract of Offers form and a purchase order awarded to the supplier offering the pricing, acceptable delivery, and other commercial terms and conditions most favorable to the Airports Authority. If award is made to other than the lowest priced quote, the reason for the decision will be documented on the Abstract of Offers form. Items for which there is a recurring need should be considered candidates for a BPO.

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#### **C.4.4 \$10,001 Through \$25,000**

Written Requests for Quotation (RFQ) should be sent to a minimum of three qualified vendors, if available. When there are a large number of sources available, Contracting Officers generally should not solicit more than 10 vendors. This should be more than sufficient to achieve competition. The Contracting Officer should ensure that other vendors on the source list have an equitable opportunity to receive subsequent solicitations.

Quotations are generally submitted by mail or hand delivery. However, when time is of the essence, fax transmission is acceptable and should be so indicated in the RFQ. The quotations received will be evaluated and documented on the Abstract of Offers form. A purchase order will be placed with the supplier offering the pricing, acceptable delivery, and other commercial terms and conditions most favorable to the Airports Authority. If award is made to other than the lowest priced quote, the reason for the decision will be documented on the Abstract of Offers form.

As a general rule, vendors will be solicited using RFQ or RFP procedures. However, there may be some instances when it is desirable to use a more restrictive, formally advertised, sealed bid procedure.

#### **C.4.5 \$25,001 Through \$200,000**

Procurements in this category are included on the Airports Authority's website. LDBE participation may be achieved by a 100% set-aside or by establishing subcontracting requirements which are incorporated into the contracts along with voluntary goals for minority business enterprise/woman business enterprise participation.

#### **C.4.6 In Excess of \$200,000**

Full and open competition is required for contracts in this category unless one of the categorical exceptions (see Paragraph 04.2) applies or the action has been specifically approved by the Board of Directors. LDBE participation may be achieved by a 100% set-aside or by establishing subcontracting requirements which are incorporated into the contracts along with

voluntary goals for minority business enterprise/woman business enterprise participation.

Special source selection procedures in Paragraph 2.6 apply for architect/engineer firms. The objective is to solicit responsible sources capable of providing, as a regular part of their business, the goods or services needed. Contracting Officers should consider Metropolitan Washington Council of Governments (COG), state and county agencies as potential sources (see Paragraph 04.2). Special emphasis will be placed on including small local contractors, minority and women-owned businesses on solicitations. To ensure broad coverage of firms that have indicated their interest in contracting opportunities with the Airports Authority, solicitations are announced through the Airports Authority's "PROJECT eLERT" e-mail notification system and be listed on the [www.mwaa.com](http://www.mwaa.com) Internet website.

### **C.5 SPECIFICATION GUIDELINES**

The importance of ensuring the adequacy of the description of the goods or specific services being purchased cannot be overemphasized. The objective is to describe and purchase, at a fair and reasonable price, a product or service that fully satisfies the Airports Authority's requirement. Specifications/Statements of Work should be prepared in a manner that encourages competition. The following paragraphs describe types of specifications:

#### **C.5.1 Generic Description**

A generic description is desirable because it encourages full and open competition.

#### **C.5.2 Brand Name or Equal**

When it is determined to be impractical or undesirable to develop a generic specification, one or more brand names (three names should be specified, if possible) may be used to convey the general style, type, character and quality of the article desired. Unless otherwise provided in the solicitation, the naming of certain brands, makes or manufacturers does not restrict vendors to these specific brands or manufacturers named. To the extent practicable, the

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characteristics of the item being requested that are the most important to the Airports Authority (salient characteristics) should be identified. Any article which the Airports Authority, at its sole discretion, determines to be the equal of those specified, considering quality, workmanship, economy of operation and suitability for the purpose intended, may be accepted. The solicitation should enable an offeror desiring advanced approval to furnish a specific "or equal" to submit a request two weeks prior to the due date of the proposal. The Contracting Officer is ultimately responsible for determining what is "equal" although full technical input should be sought as needed. A justification should 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.

### **C.5.3 Specified Choice Make/Model**

Requestors and contracting personnel must recognize the possible disadvantages of specifying brand name or equal. The problem of determining what constitutes an "equal" can be both difficult and time consuming, particularly when it is recognized that an item may be an "equal" for one application but not be acceptable for another specific application. If the requestor has been able to identify the characteristics of the item being requested that are most important to the Airports Authority (i.e., the "salient" characteristics), then the determination of "equal" should be simplified. However, in some cases, it may be impracticable or simply not cost effective, because of the nature or cost of the item involved, to develop a comprehensive description of the pertinent salient characteristics. In such instances, the requestor may decide that it is more beneficial to the Airports Authority to specify two, three or more specific makes and models that the vendor must choose among. However, this is not a recommended process because it limits the competition to those specified choices and, because it does not permit full and open competition, it requires Board of Directors' approval if the acquisition cost is over \$200,000 in accordance with Paragraph 1.1. Competition is limited because it eliminates consideration of an unlisted "or equal" which a vendor might otherwise have suggested. The determination for the use of a "Specified Choice of Make and Model"

specification should be made in advance and in writing. A justification should 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, a justification for Board approval is required if the contract is over \$200,000. During the solicitation process, efforts should be made to obtain competition between dealers who carry any of the specified makes and models.

### **C.5.4 Proprietary Description**

See Paragraph ~~01.2~~ for a description of the conditions under which a proprietary specification can be used for a procurement action over \$200,000.

## **C.6 REQUISITION APPROVAL REQUIREMENTS**

The level of approvals required for Requisitions within each office is at the discretion of the Vice President for that office. Additional approvals are required for the following categories:

Computers and Related Equipment and Services. Requisitions above \$2,500 for computers and related equipment and services require additional approval of the Information Systems Department. Not required for consumable supplies.

Trade-In of Equipment. Requisitions for procurement actions which involve trade-in of any capitalized equipment, i.e. acquisition cost \$10,000 or above, require approval of the Manager of Administrative Support Department.

## **C.7 REQUISITION FUNDING CONSIDERATIONS**

Because most contractual actions have a direct impact on Airports Authority funds, close coordination and cooperation between financial and procurement managers and staff is essential. The following ground rules have been established to ensure that adequate fiscal controls are in place while still enabling procurement to respond in a timely manner to user demands.



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The amount shown on a Requisition is an estimate of the cost of accomplishing the items described on the Requisition. Initial contract awards may be made for amounts higher than the estimate, as long as the award amount complies with the following:

<u>Estimated amount shown on Requisition</u>	<u>Percentage of initial \$</u>
up to \$5,000	25 percent not to exceed \$1,000
\$5,001 - \$25,000	20 percent not to exceed \$3,750
\$25,001 - \$100,000	15 percent not to exceed \$10,000
\$100,001 and over	10 percent not to exceed \$100,000

Before Contracting Officers make any contract award that exceeds the Requisition amount, they will first verify with the requestor who initiated the Requisition that: (1) it is their desire to have the contract executed at the increased amount and (2) that they have sufficient budgetary funding to cover what will become the initial contract value.

Beyond these thresholds, an additional or adjusted Requisition is required to show separate approval for the increased contract value prior to award.



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## **APPENDIX D PROCUREMENT JUSTIFICATION FORM & INSTRUCTIONS**



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## **APPENDIX E REQUEST FOR PROPOSALS SECTIONS I, II, AND III**

### ***E.1 SOLICITATION RESPONSE TIME***

The response time is the period of time between the date of issuance of a solicitation and the date set for receipt of offers. Reasonable time for prospective contractors to prepare and submit offers should be allowed in all solicitations.

Competition is restricted by undue limitation of response time. Also, when prospective offerors do not have adequate preparation time, the result may be higher prices. This may result from the inclusion of unnecessary contingency allowances or from the unwillingness of some concerns to respond. Factors to consider in determining response time include-

- Urgency of the Airports Authority's need for the goods, construction, or services;
- Complexity of the specifications and other parts of the solicitation;
- Estimated cost of the project;
- Extent of subcontracting anticipated;
- Geographic distribution of vendors;
- Normal time for mail transmission of both solicitations and submittals; and
- Other related factors such as the due date should not be on a Monday or the day following a holiday.

### ***E.2 SOLICITATION PACKAGE COMMERCIAL REVIEW***

Contracting Officers are responsible for all commercial aspects of the solicitation package. This requires Contracting Officers to comprehensively review the entire package including the specifications and all enclosures and attachments to ensure (1) that all commercial aspects of the package are consistent with Airports Authority policy, (2) that the Solicitation Provisions and Contract Provisions are modified if necessary to fit the specific circumstances of the solicitation, (3) that there are no conflicts nor inconsistencies within or between the various sections of the solicitation, and (4) that the solicitation effectively communicates the Airports Authority's requirements in a clear and concise manner. Several

aspects of the solicitation such as the Section III "Schedule" and the basis of award/evaluation criteria have both commercial and technical aspects that require close scrutiny by the CO. The Contracting Officer's signature on the "Contract Action Concurrence Sheet" indicates acceptance of the commercial aspects of the entire solicitation.

### ***E.3 SOLICITATION TECHNICAL REVIEW***

The Contracting Officer will ask the requestor/technical representative to review the solicitation package and sign-off in the "Technical Review" block of the Contract Action Concurrence Sheet. If Equal Opportunity Programs Department or legal review is required, that will also be accomplished, if possible, prior to submittal of the package to Manager, Procurement and Contracts Department. Efforts should be made to minimize delays to the procurement cycle by utilizing concurrent reviews by the CO, Equal Opportunity Programs Department, legal (if applicable) and the requestor/technical representative. The requestor/technical representative, may elect to waive technical review of the solicitation package prior to its issuance, provided the Contracting Officer documents this waiver in the contract file.





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## **APPENDIX F DETERMINATION OF RESPONSIBILITY FORM**



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## **APPENDIX G STANDARD FORM 330 ARCHITECT-ENGINEER QUALIFICATIONS**





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## **APPENDIX H COTR LETTER AND ATTACHMENT**



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## **APPENDIX I FORMAT FOR COMPUTING LABOR RATES**



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## **APPENDIX J CONTRACTOR'S RELEASE FORM**





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## **APPENDIX K APPLICABILITY OF FTA CONTRACT CLAUSES**

### **APPLICABILITY OF THIRD PARTY CONTRACT CLAUSES**

(excluding micro-purchases, except for construction contracts over \$2,000)

<b>CLAUSE</b>	<b>TYPE OF PROCUREMENT</b>				
	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	All	All	All	All	All
Civil Rights (EEO, Title VI & ADA)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Suspension and Debarment	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000	>\$100,000	>\$100,000
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Involves property transported by ocean vessel	Involves property transported by ocean vessel	Involves property transported by ocean vessel
Fly America	Involves foreign transport or travel by air	Involves foreign transport or travel by air	Involves foreign transport or travel by air	Involves foreign transport or travel by air	Involves foreign transport or travel by air

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CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Davis Bacon Act				>\$2,000 (including ferry vessels)	
Contract Work Hours & Safety Standards Act		>\$100,000 (except transportation services)	>\$100,000	>\$100,000 (including ferry vessels)	
Copeland Anti-Kickback Act				>\$2,000 (including ferry vessels)	
Bonding				>\$100,000	
Seismic Safety	A&E for New Buildings & Additions			New Buildings & Additions	
Transit Employee Protective Arrangements		Transit Operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations			
Alcohol Misuse and Testing		Transit Operations			
Patent Rights	Research & Development				
Rights in Data and Copyright Requirements	Research & Development				
Energy Conservation	All	All	All	All	All
Recycled Products		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects

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CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
ADA Access	Architectural & Engineering	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States



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## **APPENDIX L MODEL FEDERAL CLAUSES**

### ***L.1 NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES***

**Applicability:** Applicable to all contracts.

**Flow Down:** Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

**Suggested Language:**

The Airports Authority and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the Solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Airports Authority, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

### ***L.2 FALSE STATEMENTS OR CLAIMS, CIVIL AND CRIMINAL FRAUD***

**Applicability:** Applicable to all contracts.

**Flow Down:** These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

**Suggested Language:**

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §§ 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract Work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 USC § 5307, the Government reserves the right to impose the penalties of 18 USC § 1001 and 49 USC § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

### ***L.3 ACCESS TO THIRD PARTY CONTRACT RECORDS***

**Applicability:** See Appendix K.

**Flow Down:** The FTA does not require the inclusion of these requirements in subcontracts.

**The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language:**

The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until the Airports Authority, the FTA Administrator, the Comptroller General or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

The following access to records requirements apply to this Contract:

In accordance with 49 CFR 18.36(i), the Contractor agrees to provide the Airports Authority, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor that are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

### ***L.4 CHANGES TO FEDERAL REQUIREMENTS***

**Applicability:** Applicable to all contracts.

**Flow Down:** The Federal Changes requirement flows down appropriately to each applicable changed requirement.

**Suggested Language:**

The preceding provisions include, in part, certain standard terms and conditions required by the Department of Transportation, whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F or its successors are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this agreement. The Contractor shall not perform any act, fail to perform any act or refuse to comply with any Airports Authority requests that would cause the Airports Authority to be in violation of the FTA terms and conditions.



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The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Airports Authority and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

## **L.5 TERMINATION**

**Applicability:** All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

**Flow Down:** The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

### **Suggested Language:**

**a. Termination for Convenience (General Provision)** The Airports Authority may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Airports Authority to be paid the Contractor. If the Contractor has any property in its possession belonging to the Airports Authority the Contractor will account for the same, and dispose of it in the manner the Airports Authority directs.

**b. Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver material in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Airports Authority may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for material delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Airports Authority that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Airports Authority, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

**c. Opportunity to Cure (General Provision)** The Airports Authority in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to the Airports Authority's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by the Contractor of written notice from the Airports Authority setting forth the nature of said breach or default, the Airports Authority shall have the right to terminate the Contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude the Airports Authority from also pursuing all available remedies against the Contractor and its sureties for said breach or default.

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**d. Waiver of Remedies for any Breach** In the event that the Airports Authority elects to waive its remedies for any breach by the Contractor of any covenant, term or condition of this Contract, such waiver by the Airports Authority shall not limit the Airports Authority's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

**e. Termination for Convenience (Professional or Transit Service Contracts)** The Airports Authority, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Airports Authority shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

**f. Termination for Default (Material and Service)** If the Contractor fails to deliver material or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Airports Authority may terminate this contract for default. The Airports Authority shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for material delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Airports Authority.

**g. Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Airports Authority may terminate this contract for default. The Airports Authority shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while the Contractor has possession of Airports Authority goods, the Contractor shall, upon direction of the Airports Authority, protect and preserve the goods until surrendered to the Airports Authority or its agent. The Contractor and Airports Authority shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Airports Authority.

**h. Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the Airports Authority may terminate this contract for default. The Airports Authority shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Airports Authority may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Airports Authority resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Airports Authority in completing the work. The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Airports Authority, acts of another Contractor in the performance of a contract with the Airports Authority, epidemics, quarantine restrictions, strikes, freight embargoes; and

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2. the contractor, within ten (10) days from the beginning of any delay, notifies the Airports Authority in writing of the causes of delay. If in the judgment of the Airports Authority, the delay is excusable, the time for completing the work will be extended. The judgment of the Airports Authority shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Airports Authority.

**i. Termination for Convenience or Default (Architect and Engineering)** The Airports Authority may terminate this contract in whole or in part, for the Airports Authority's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Airports Authority shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If the termination is for the convenience of the Airports Authority, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If the termination is for failure of the Contractor to fulfill the contract obligations, the Airports Authority may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Airports Authority. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Airports Authority.

**j. Termination for Convenience or Default (Cost-Type Contracts)** The Airports Authority may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the Airports Authority or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Airports Authority, or property supplied to the Contractor by the Airports Authority. If the termination is for default, the Airports Authority may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Airports Authority and the parties shall negotiate the termination settlement to be paid the Contractor. If the termination is for the convenience of the Airports Authority, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the Airports Authority determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the Airports Authority, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

## **L.6 CIVIL RIGHTS REQUIREMENTS**

**Applicability:** The Civil Rights Requirements apply to all contracts.

**Flow Down:** The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

**The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text:**

The following requirements apply to the underlying Contract:

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**1. Nondiscrimination:** In accordance with Title VI of the Civil Rights Act, as amended, 42 USC § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 USC § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 USC § 12132, and Federal transit law at 49 USC § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

**2. Equal Employment Opportunity:** The following equal employment opportunity requirements apply to the underlying Contract:

(a) **Race, Color, Creed, National Origin, Sex:** In accordance with Title VII of the Civil Rights Act, as amended, 42 USC § 2000e, and Federal transit laws at 49 USC § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 CFR Parts 60 *et seq.*, (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 USC § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements the FTA may issue.

(b) **Age:** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC §§ 623 and Federal transit law at 49 USC § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements the FTA may issue.

(c) **Disabilities:** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 USC § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements the FTA may issue.

**3.** The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by the FTA, modified only if necessary to identify the affected parties.

## **L.7 DISADVANTAGED BUSINESS ENTERPRISES (DBE)**

**Applicability:** Applicable to all contracts.

**Flow Down:** The requirements of clause subsection b flow down to subcontracts.

**Suggested Language:**

**Disadvantaged Business Enterprises**

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- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*
- b. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Airports Authority deems appropriate. Each subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).
- c. *{If a separate contract goal has been established, use the following}* Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following prior to award.
1. The names and addresses of DBE firms that will participate in this contract;
  2. A description of the work each DBE will perform;
  3. The dollar amount of the participation of each DBE firm participating;
  4. Written documentation of the bidder/offeror's commitment to use a DBE Subcontractor whose participation it submits to meet the contract goal;
  5. Written confirmation from the DBE that it is participating in the contract as provided in the prime Contractor's commitment; and
  6. If the contract goal is not met, evidence of good faith efforts to do so. Offerors must present the information required above as a matter of responsiveness (*see* 49 CFR 26.53(3)).
- d. The Contractor is required to pay its Subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from the Airports Authority. In addition, the Contractor is required to return any retainage payments to those Subcontractors within 30 days after the Subcontractor's work related to this contract is satisfactorily completed.
- e. The Contractor must promptly notify the Airports Authority, whenever a DBE Subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE Subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE Subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Airports Authority.

## **L.8 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

**Applicability:** Applicable to all contracts.

**Flow Down:** Unlimited flow down.

**Suggested Language:**

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The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Airports Authority requests which would cause the Airports Authority to be in violation of the FTA terms and conditions.

## ***L.9 SUSPENSION AND DEBARMENT***

**Applicability:** Applicable to all Contracts expected to equal or exceed \$25,000 as well as any Contract or Subcontract (at any level) for Federally required auditing services.

**Flow Down:** Flows down to any Subcontract level expected to equal or exceed \$25,000.

### **Suggested Language:**

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C, and must include the requirement to comply with 49 CFR 29, Subpart C, in any lower-tier covered transaction it enters into.

By signing and submitting its Bid or Proposal, the Bidder or Proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Airports Authority. If it is later determined that the Bidder or Proposer knowingly rendered an erroneous certification, in addition to remedies available to the Airports Authority, the Federal government may pursue available remedies, including but not limited to suspension and/or debarment. The Bidder or Proposer agrees to comply with the requirements of 49 CFR 29, Subpart C, while this Bid or Proposal is valid and throughout the period of any Contract that may arise from this Bid or Proposal. The Bidder or Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## ***L.10 BUY AMERICA***

**Applicability:** Applicable to construction contracts and acquisition of goods or rolling stock valued at more than \$100,000.

**Flow Down:** Buy America requirements apply to Contractors, who are responsible for ensuring that lower tier Contractors and Subcontractors are in compliance. The \$100,000 threshold applies only to the Contract. Subcontracts under that amount are subject to Buy America.

### **Mandatory Language:**

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are



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listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the Airports Authority the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

**Certification requirement for procurement of steel, iron, or manufactured products.**

*Certificate of Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

**Certification requirement for procurement of buses, other rolling stock and associated equipment.**

*Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).*

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

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Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

## ***L.11 RESOLUTION OF DISPUTES, BREACHES AND OTHER LITIGATION***

**Applicability:** Applicable to contracts exceeding \$100,000.

**Flow Down:** The Breaches and Dispute Resolutions requirements flow down to all tiers.

The FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts:

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the Airports Authority's Contracting Officer. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Contracting Officer. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Contracting Officer shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by the Airports Authority, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**Remedies** - Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Airports Authority and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction.

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Airports Authority, Airports Authority

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representative, or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **L.12 LOBBYING**

**Applicability:** The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Services/Operational Services/Turnkey contracts.

**Flow Down:** Unlimited flow down.

### **Mandatory Language:**

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the Airports Authority.

### **CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements  
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned Contractor certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)].
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including Subcontracts, Subgrants, and Contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly.

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This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date

### **L.13 CLEAN AIR**

**Applicability:** The Clean Air requirements apply to all Contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

**Flow Down:** The Clean Air requirements flow down to all Subcontracts which exceed \$100,000.

**Suggested Language:**

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§ 7401 *et seq.* The Contractor agrees to report each violation to the Airports Authority and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each Subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by the FTA.

### **L.14 CLEAN WATER**

**Applicability:** The Clean Water requirements apply to each Contract and Subcontract which exceeds \$100,000.

**Flow Down:** The Clean Water requirements flow down to FTA Recipients and Subrecipients at every tier.

**Suggested Language:**

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 *et seq.* The Contractor agrees to report each violation to the

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Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by the FTA.

### ***L.15 CARGO PREFERENCE***

**Applicability:** The Cargo Preference requirements apply to all Contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

**Flow Down:** The Cargo Preference requirements apply to all Subcontracts when the Subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

**Suggested Language:**

The Contractor agrees to the following:

To use privately owned U.S.-flag commercial vessels to ship at least fifty (50) percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, material or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for U.S.-flag commercial vessels;

To furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill of lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Airports Authority (through the Contractor in the case of a Subcontractor's bill-of-lading.)

To include these requirements in all Subcontracts issued pursuant to this Contract when the Subcontract may involve the transport of equipment, material or commodities by ocean vessel.

### ***L.16 FLY AMERICA***

**Applicability:** The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

**Flow Down:** First tier contractors are responsible for ensuring that lower tier Contractors and Subcontractors are in compliance.

**Suggested Language:**

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The Contractor agrees to comply with 49 USC 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that Recipients and Subrecipients of federal funds and their Contractors are required to use U.S. flag air carriers for U.S. government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all Subcontracts that may involve international air transportation.

### ***L.17 DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS***

**Applicability:** The acts apply to any construction Contract over \$2,000.

**Flow Down:** The acts flows down to all subcontracts.

**Suggested Language:**

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and



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(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

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(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** – The Airports Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal Contract with the same prime Contractor, or any other federally-assisted Contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Airports Authority may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees

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under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Airports Authority for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime Contractor is responsible for the submission of copies of payrolls by all Subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or Subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship

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program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for ~~lessother~~ than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) **Compliance with Copeland Act requirements** - The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

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(6) **Subcontracts** - The Contractor or Subcontractor shall insert in any Subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. The prime Contractor shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all the Contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a Subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and the Airports Authority, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government Contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be Subcontracted to any person or firm ineligible for award of a Government Contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## ***L.18 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT***

**Applicability:** Applies to contracts exceeding \$100,000.

**Flow Down:** Provisions of the act flow down to Subcontracts.

### **Suggested Language:**

(1) **Overtime requirements** - No Contractor or Subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.



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(3) **Withholding for unpaid wages and liquidated damages** – The Airports Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such Contract or any other Federal Contract with the same prime Contractor, or any other federally-assisted Contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The Contractor or Subcontractor shall insert in any Subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

## **L.19 BONDING**

**Applicability:** For those construction or facility improvement Contracts or Subcontracts exceeding \$100,000, the FTA may accept the bonding policy and requirements of the Airports Authority, provided that they meet the minimum requirements for construction contracts as follows:

a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.

c. A payment bond on the part of the Contractor for 100 percent of the Contract price. A "payment bond" is one executed in connection with a Contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the Contract. Payment bond amounts required from Contractors are as follows:

(1) 50% of the Contract price if the Contract price is not more than \$1 million;

(2) 40% of the Contract price if the Contract price is more than \$1 million but not more than \$5 million; or

(3) \$2.5 million if the Contract price is more than \$5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a Recipient in lieu of performance and payment bonds, provided the Recipient has established a procedure to assure that the interest of the FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

### **Suggested Language:**

#### **Bid Bond Requirements (Construction)**

##### **(a) Bid Security**

A Bid Bond must be issued by a fully qualified surety company acceptable to Recipient and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.



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(b) Rights Reserved

In submitting this Bid, it is understood and agreed by Bidder that the right is reserved by the Airports Authority to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of the Airports Authority.

It is also understood and agreed that if the undersigned Bidder should withdraw any part or all of his Bid within [ninety (90)] days after the bid opening without the written consent of the Airports Authority, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of the Airports Authority damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefore.

It is further understood and agreed that to the extent the defaulting Bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by the Airports Authority as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense the Airports Authority for the damages occasioned by default, then the undersigned Bidder agrees to indemnify the Airports Authority and pay over to the Airports Authority the difference between the bid security and the Airports Authority's total damages, so as to make the Airports Authority whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the Bid unresponsive.

**Performance and Payment Bonding Requirements (Construction)**

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original Contract price, unless the Airports Authority determines that a lesser amount would be adequate for the protection of the Airports Authority.
2. The Airports Authority may require additional performance bond protection when a Contract price is increased. The increase in protection shall generally equal 100 percent of the increase in Contract price. The Airports Authority may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:
  - (i) Fifty percent of the Contract price if the Contract price is not more than \$1 million.
  - (ii) Forty percent of the Contract price if the Contract price is more than \$1 million but not more than \$5 million; or
  - (iii) Two and one half million if the Contract price is more than \$5 million.

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2. If the original Contract price is \$5 million or less, the Airports Authority may require additional protection as required by subparagraph 1 if the Contract price is increased.

### **Performance and Payment Bonding Requirements (Non-Construction)**

When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original Contract price, unless the Airports Authority determines that a lesser amount would be adequate for the protection of the Airports Authority.
2. The Airports Authority may require additional performance bond protection when a Contract price is increased. The increase in protection shall generally equal 100 percent of the increase in Contract price. The Airports Authority may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

A payment bond is required only when a performance bond is required, and if the use of payment bond is in the Airports Authority interest. When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:
  - (i) Fifty percent of the Contract price if the Contract price is not more than \$1 million;
  - (ii) Forty percent of the Contract price if the Contract price is more than \$1 million but not more than \$5 million; or
  - (iii) Two and one half million if the Contract price is increased.

### **Advance Payment Bonding Requirements**

The Contractor may be required to obtain an advance payment bond if the Contract contains an advance payment provision and a performance bond is not furnished. The Airports Authority shall determine the amount of the advance payment bond necessary to protect the Airports Authority.

### **Patent Infringement Bonding Requirements (Patent Indemnity)**

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The Airports Authority shall determine the amount of the patent indemnity to protect the Airports Authority.

### **Warranty of the Work and Maintenance Bonds**

1. The Contractor warrants to the Airports Authority, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by the Airports Authority, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by the Airports Authority and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the Airports Authority. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to the Airports Authority written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

## ***L.20 SEISMIC SAFETY***

**Applicability:** The Seismic Safety requirements apply only to Contracts for the construction of new buildings or additions to existing buildings.

**Flow Down:** The Seismic Safety requirements flow down from first tier Contractors to assure compliance with the applicable building standards for Seismic Safety including the work performed by all Subcontractors.

**Suggested Language:**

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a Subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

## ***L.21 TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS***

**Applicability:** Applies to Contracts for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.

**Flow Down:** These provisions are applicable to all Contracts and Subcontracts at every tier.

**Suggested Language:**

(1) The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying Contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Airports Authority's Project from which Federal assistance is provided to support work on the underlying Contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any Contract financed with Federal assistance provided by the FTA either for projects for

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elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body Subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to the FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying Contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each Subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

## **L.22 CHARTER SERVICE OPERATIONS**

**Applicability:** Applicable to Operational Service Contracts.

**Flow Down:** Applicable to first tier Contractors.

**Suggested Language:**

The Contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that the Airports Authority is prohibited from providing charter service using Federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

## **L.23 SCHOOL BUS OPERATIONS**

**Applicability:** Applicable to Operational Service Contracts.

**Flow Down:** Applicable to first tier Contractors.

**Suggested Language:**

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Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, the Airports Authority may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, the Airports Authority may not use Federally funded equipment, vehicles, or facilities.

## ***L.24 DRUG USE AND TESTING AND ALCOHOL MISUSE AND TESTING***

**Applicability:** Applicable to Operational Service Contracts.

**Flow Down:** Anyone who performs a safety-sensitive function for the Airports Authority is required to comply with 49 CFR 653 and 654, with certain exceptions for Contracts involving maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance Subcontractors.

### **Suggested Language:**

FTA has developed three model Contract provisions for recipients to use "as is" or to modify to fit their particular situations.

Under Option 1, the Recipient ensures the Contractor's compliance with the rules by requiring the Contractor to participate in a drug and alcohol program administered by the Recipient. The advantages of doing this are obvious: the Recipient maintains total control over its compliance with 49 CFR 653 and 654. The disadvantage is that the Recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option only for those Recipients which have a testing program for their employees, and can add the Contractor's safety-sensitive employees to that program.

Under Option 2, the Recipient relies on the Contractor to implement a drug and alcohol testing program that complies with 49 CFR 653 and 654, but retains the ability to monitor the Contractor's testing program; thus, the Recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the Recipient the power to ensure that the Contractor complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the Contractor's program, the Recipient may find itself out of compliance with the rules.

Under option 3, the Recipient specifies some or all of the specific features of a Contractor's drug and alcohol compliance program. Thus, it requires the Recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the Recipient has more control over the Contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the Recipient has to specify and understand clearly what it wants to do and why.

### **Drug and Alcohol Testing Option 1**

The Contractor agrees to participate in the Airports Authority's drug and alcohol program established in compliance with 49 CFR 653 and 654.

### **Drug and Alcohol Testing Option 2**

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The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of the Commonwealth of Virginia, or the Airports Authority, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The Contractor agrees further to certify annually its compliance with Parts 653 and 654 before January 30 and to submit the Management Information System (MIS) reports before February 28 to Contracting Officer's technical Representative. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

### **Drug and Alcohol Testing Option 3**

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of the Commonwealth of Virginia, or the Airports Authority, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The Contractor agrees further to certify annually its compliance with Parts 653 and 654 before January 30 and to submit the Management Information System (MIS) reports before February 28 to Contracting Officer's Technical Representative. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before January 30 a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the Airports Authority wishes the contractor to use) as its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the Recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

## ***L.25 PATENT RIGHTS AND RIGHTS IN DATA AND COPYRIGHT REQUIREMENTS***

**Applicability:** Only applicable to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information.

**Flow Down:** Applicable to all Contractors and their Contracts at every Tier.

**Suggested Language:**

### **CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK**

**A. Rights in Data** - This following requirements apply to each Contract involving experimental, developmental or research work:



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(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the Contract to which this Attachment has been added:

(a) Except for its own internal use, the Airports Authority or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Airports Authority or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that Contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Airports Authority or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is the FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless the FTA determines otherwise, the Airports Authority and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this provision is added agrees to permit the FTA to make available to the public, either the FTA's license in the copyright to any subject data developed in the course of that Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying Contract, is not completed for any reason whatsoever, all data developed under that Contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Airports Authority or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by the FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Airports Authority and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Airports Authority or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that

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Contract. Neither the Airports Authority nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Airports Authority or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract to which this provision has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Airports Authority or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless the FTA determines otherwise, the Contractor agrees to include these requirements in each Subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by the FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Airports Authority and the Contractor agree to take the necessary actions to provide, through the FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each Subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**B. Patent Rights** - The following requirements apply to each Contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the Contract to which this provision has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Airports Authority and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until the FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Airports Authority and the Contractor agree to take the necessary actions to provide, through the FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each Subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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## **L.26 ENERGY CONSERVATION**

**Applicability:** Applicable to all Contracts.

**Flow Down:** The Energy Conservation requirements extend to all Third Party Contractors and their Contracts at every tier.

**Suggested Language:**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

## **L.27 RECYCLED PRODUCTS**

**Applicability:** Applicable to all Contracts for items designated by the EPA, when the Recipient or Contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year,

**Flow Down:** These requirements flow down to all to all Contractor and Subcontractor tiers.

**Suggested Language:**

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

## **L.28 CONFORMANCE WITH ITS NATIONAL ARCHITECTURE**

**Applicability:** Applicable to Contracts and solicitations for ITS projects.

**Flow Down:** Flow down is to all tiers.

**Suggested Language:**

The Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

## **L.29 ADA ACCESS**

**Applicability:** Applicable to Contracts for rolling stock or facilities construction/renovation.

**Flow Down:** The requirements flow down to all tiers.

**Suggested Language:**

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The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent the FTA approves otherwise in writing.

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