



REPORT TO THE BUSINESS ADMINISTRATION COMMITTEE

Recommendation to Revise the Airports Authority Contracting Manual

May 2015



Purpose

Staff is requesting that the Business Administration Committee approve and recommend to the Board of Directors minor revisions to the Metropolitan Washington Airports Authority's Contracting Manual, Fourth Edition, Revision 1 (Manual).

Background

The Contracting Manual fulfills the requirement as set forth in the lease between the Airports Authority and the U.S. Department of Transportation (DOT) for “published competitive procedures.”

Background

The Manual was last amended to the Fourth Edition, Revision 1 on May 21, 2014, in response to suggested clarifications by the U.S. DOT, Office of Inspector General in the areas of Evaluation Committees, Sole Source Negotiations and Task Orders as well as to reflect changes in the Statement of Functions that consolidated all acquisition procurement functions under the Office of Finance, Procurement and Contracts Department.

Proposed Revisions

- **Delegation of Authority to Chief Revenue Officer (CRO) (Chapter 6 and Appendix A)**
 - Chapter 6 has been revised throughout to reflect the responsibilities of the CRO and to align the Manual with the new organizational structure within the Airports Authority.
- **Increase the Simplified Purchasing Threshold (Foreword and Chapter 2)**
 - Currently, the Manual sets forth the contracting policies and procedures that the Airports Authority uses to acquire goods and services with a total dollar commitment currently in excess of \$50,000. The revision is to increase the amount to \$150,000.
 - This change is warranted due to the consolidation of procurement functions under the purview of the Procurement and Contracts Department. Increasing the simplified acquisition amount will improve the efficiency and operational assignments in the overall procurement operation, without impacting the integrity of the process.
 - This will align the Airports Authority's simplified acquisition threshold with the Federal Acquisition Regulation.

Recommendation

Staff recommends that the Business Administration Committee approve and recommend to the Board of Directors adoption of the revisions to the Airports Authority Contracting Manual, Fourth Edition, Revision 1 with an effective date of June 1, 2015.

Proposed Resolution

Revising the Fourth Edition, Revision 1 of the Contracting Manual

WHEREAS, The Contracting Manual (Manual) was last amended on May 21, 2014 in response to suggested clarifications by the U.S. Department of Transportation, Office of Inspector General;

WHEREAS, The May 21, 2014 amendments to the Manual also reflected changes in the Statement of Functions that consolidated all acquisition procurement functions under the Office of Finance, Procurement and Contracts Department;

WHEREAS, In light of this consolidation of all acquisition procurement functions within the Office of Finance, including the “simplified purchases” function, staff have recommended an increase in the size of acquisitions that may be procured under the “simplified purchases” procedures from \$50,000 to \$150,000, in order to improve the efficiency and operational assignments in the overall procurement operation without impacting the integrity of the process;

WHEREAS, In light of changes that been made in the President and CEO’s delegations of contracting authority within the Airports Authority as a result of the creation of the Office of the Chief Revenue Officer, staff have recommended revisions to the Manual that reflect those revised delegations;

WHEREAS, The Business Administration Committee has approved these staff recommendations and the Manual revisions that implement them, and has recommended to the Board of Directors that it formally approve these revisions and, in addition, approve and adopt the Manual, as amended by these revisions, which will be referred to as the Fourth Edition, Revision 2, of the Contracting Manual; now, therefore, be it

RESOLVED, That the Board of Directors approves the recommended revisions to the Contracting Manual, as presented for its consideration on May 20, 2015, and, in addition, approves and adopts the Fourth Edition, Revision 2, of the Contracting Manual, which reflects and includes these revisions, with an effective date of June 1, 2015.

*For Consideration by the Business Administration Committee and
Board of Directors on May 20, 2015*

REPORT TO THE BUSINESS ADMINISTRATION COMMITTEE
RECOMMENDATION TO REVISE THE AIRPORTS AUTHORITY
CONTRACTING MANUAL

MAY 2015

PURPOSE

Staff requests that the Business Administration Committee approve and recommend to the Board of Directors minor revisions to the Metropolitan Washington Airports Authority's Contracting Manual, Fourth Edition, Revision 1 (Manual).

BACKGROUND

The Manual fulfills the requirement as set forth in the lease between the Airports Authority and the U.S. Department of Transportation (DOT) for "published competitive procedures." The Manual was last amended to the Fourth Edition, Revision 1 on May 21, 2014 in response to suggested clarifications by the U.S. DOT, Office of Inspector General in the areas of Evaluation Committees, Sole Source Negotiations and Task Orders as well as to reflect changes in the Statement of Functions that consolidated all acquisition procurement functions under the Office of Finance, Procurement and Contracts Department.

The realignment of all acquisition functions enabled the Procurement and Contracts Department to monitor all acquisition contracting actions throughout the Airports Authority, ensuring compliance with applicable procedures. Now that the consolidation of procurement functions is complete, the simplified acquisition threshold should be increased to \$150,000. This will align the Airports Authority's simplified acquisition threshold with the Federal Acquisition Regulation. Increasing the simplified acquisition amount will improve the efficiency and operational assignments in the overall procurement operation, without impacting the integrity of the process. The existing simplified acquisition processes as stated in the Airport Purchasing Policies and Procedures Manual will be modified to the new limits and along with the Contracting Manual will govern how procurements are completed under this increased threshold.

On March 19, 2014, the Board amended the Statement of Functions and established the position of Chief Revenue Officer (CRO) which has oversight authority over several key offices at the Airports Authority, including the Office of Customer and Concessions Development. As a result of this organizational change, Chapter 6 of the Manual, which deals with the procedures used to acquire and administer concessions' contracts, should be updated and amended to properly reflect the creation of the CRO position, as well as to reflect the CRO's approval, administration and oversight functions with respect to concessions' contracts.

Staff is also currently working on further revisions to the Manual which are intended to adopt certain best practices and to improve various procurement processes and procedures. Staff anticipates presenting those recommendations to the Business Administration Committee for consideration by the fourth quarter of 2015.

DISCUSSION

The current revisions to the Manual are necessary in order to 1) align the Manual with the Airports Authority's organizational structure, and 2) increase the simplified acquisition threshold. The changes recommended are:

Delegation of Authority to CRO (Chapter 6 and Appendix A), Chapter 6 has been revised throughout to reflect the responsibilities of the CRO and to align the Manual with the new organizational structure within the Airports Authority.

Increase the Simplified Purchasing Threshold (Foreword and Chapter 2), Currently, the 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 in excess of \$50,000. The revision is to increase the amount to \$150,000.

The recommended changes will be effective on June 1, 2015.

RECOMMENDATION

Staff recommends that the Business Administration Committee approve and recommend to the Board of Directors adoption of the revisions to the Airports Authority Contracting Manual, Fourth Edition, Revision 1, effective June 1, 2015.

Prepared by

Office of Finance
Procurement and Contracts Department
May 2015

Attachment:

Draft Airports Authority Contracting Manual, Fourth Edition, Revision 2, effective June 1, 2015 (redline version compared to Fourth Edition, Revision 1)

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

CONTRACTING MANUAL – FOURTH EDITION

FOREWORD

The Metropolitan Washington Airports Authority's *Contracting Manual* (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~~150,000 and for all construction contracting procedures. Procedures for acquisitions below ~~\$50~~150,000 are in the Airports Authority's *Airport Purchasing Policies and Procedures Manual*. The Manual also includes, in Chapter 6, contracting procedures for award of concession contracts and, in Chapter 10, contracting procedures for award of Federal Transit Administration grant supported contracts.

The Manual applies generally to the acquisition of goods, services and construction by the Airports Authority. It also applies to Airports Authority contracts for concessions and contracts to manage concessions at Ronald Reagan Washington National Airport and Washington Dulles International Airport or along the Dulles Toll Road. As set out more fully in the Introduction and Scope of the Manual, it does not apply (i) to circumstances that do not involve the acquisition of goods and/or services by the Airports Authority, such as grants and sponsorships provided by the Airports Authority and transactions involving real estate (such as leases (except in connection with a concession contract), easements and licenses), or (ii) to acquisitions by the Airports Authority that, by their very nature, do not require application of the Manual's contracting procedures, such as agreements with credit rating agencies, and agreements involving organizational memberships and membership dues, conferences and conference fees, and similar matters.

This Revision ~~12~~ of the Fourth Edition of the Manual is effective June ~~15, 2014~~ 1, 2015.

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. Inquiries should be directed to-

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Manager, Procurement and Contracts Department
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Washington, DC 20001-6000
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Numerous other Airports Authority points of contact are included in Appendix B.



John E. Potter
President and Chief Executive Officer

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specifications, or drawings as applicable. Answers to questions could be made a new attachment to Section X. Consistent with the negotiations and a BAFO, if one was issued, the contractor's final technical and price proposals shall be incorporated as part of the contract.

2.4.6 Determination of Responsibility

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

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

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

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.

NOTE: The LDBE program does not apply to solicitations funded by the FTA.

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.

2.4.6.3 Licensing Requirements

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

2.4.6.4 Subcontractor Responsibility

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

2.4.6.5 Sources for Determining Responsibility

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

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

2.4.6.6 Responsibility Findings

Contracting Officers must document in the contract file their responsibility findings on a Determination of Prospective Contractor Responsibility Form (see Appendix E) for contracts over \$~~25~~150,000.

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

6 CONCESSIONS CONTRACTS

Chapter 6 describes procedures used to acquire and administer 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 in this chapter is the solicitation, evaluation, and award process for concession contracts. The chapter also describes the notification and debriefing of unsuccessful offerors. In addition, it covers various aspects of the administration of concession contracts.

Concessions are businesses 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.¹ 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 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 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.

Concessions are competitively solicited using Request for Proposals (RFP) or Invitation for Bids (IFB) procedures as set forth below. The RFP process considers not only the amount of revenue that offerors propose to pay to the Airports

¹ 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.

Authority but also non-financial aspects of their proposals, such as operational and management aspects of the proposed operation, customer service commitments, etc. 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 for its exclusive use in the conduct of its business. In all instances, unless otherwise specified in the contract, space arrangements in Airports Authority concession contracts are to be treated as leases regardless of whether a separate rental is specified for the space.

NOTE: The provisions of this Chapter 6 are not applicable to FTA funded solicitations.

6.1 **CONTRACTING AUTHORITY**

6.1.1 **Contracting Officers**

Only persons with formally delegated ~~written~~ authority to enter into and administer contracts ~~and subject to this Chapter 6, as well as~~ other contractual instruments such as modifications, ~~and~~ task orders, ~~and leases~~ on behalf of the Airports Authority, may serve as a Contracting Officer for such contracts. In the Directive referenced in Paragraph 1.5.1, the ~~Concession and Property Development Manager has been delegated~~ occupants of specified positions within the Airports Authority have been delegated the authority to enter into and administer the concession and other revenue-producing contracts addressed by this chapter, regardless of dollar amount, with certain exceptions. ~~In the Directive, the Airport Manager for each Airport has also been delegated the authority to enter into and administer certain concession contracts, and to re-delegate this authority to individual employees occupying other specified positions.~~

Documentation of all such contracting authority re-delegations shall be maintained by the ~~staff members~~employees 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 re-delegations of contracting authority.

Any re-delegations of contracting authority ~~by a staff member cannot relating to contracts under this Chapter 6 may not~~ exceed the limits of ~~such staff member's~~ the re-delegating employee's delegated authority.

All ~~persons~~ employees delegated and exercising contracting authority ~~and over contracts addressed in this chapter, all employees who have received a re-delegation of such contracting authority, and all employees designated as a Contracting Officers' Technical Representatives~~ Representative (COTR) in relation to such contracts shall receive initial and recurring formal procurement training.

6.1.2 ~~Vice President~~ Approvals

In this Chapter 6, certain ~~contracting officer~~ actions ~~must relating to contracts covered by the chapter that are taken by employees to whom contracting authority has been re-delegated pursuant to the Directive referenced in Paragraph 1.5.1 are to~~ be approved by the ~~Vice President for Business Administration~~ Chief Revenue Officer or ~~the~~ Vice President and Airport Manager ~~for each airport, as appropriate.~~

6.1.3 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.

6.1.4 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 approval is also required to award concession contracts with other than full and open competition.

The Board has authorized the 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 Chief Revenue Officer or a Vice President and Airport Manager ~~or the Vice President for Business Administration~~ shall be sent to the CEO with

appropriate justification for the extension. If approved, this memorandum shall be placed in the contract file.

6.1.5 Full and Open Competition

The Airports Authority is committed to "obtain to the maximum extent practicable, full and open competition" for its contracting opportunities. Concession contracts to be awarded directly by the Airports Authority with other than full and open competition must be approved by the Board prior to award.

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 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. 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 the approval of the Manager, Procurement and Contracts Department.

6.1.6 Full and Open Competition With Exclusions - Airport Concessions 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 ACDBE firms. While competition for such contracts is limited to ACDBE firms, all ACDBE 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% ACDBE participation, there shall be a minimum of three to five ACDBE firms qualified to compete for a concession opportunity. The justification for limiting competition to ACDBE firms must explain the analysis used to support the limitation.

6.1.7 Other than Full and Open Competition

Prior to award, all concession contracts awarded through other than full and open competition must be supported by written justification documents and must be approved by the Board. The justification to be submitted by the COTR 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 his/her knowledge and belief. Justifications must be made publicly available by posting them on the Airports Authority website within fourteen (14) days after the contract award and must remain available for a minimum of thirty (30) days.

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 Ethics for Members of the Board of Directors*, as they may be amended from time to time, which are available on the Airports Authority's website, 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;² 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

² 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*.

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.

6.1.10 Contractor Certifications and Disclosures; Employment of Former Authority Employees

All offerors for Airports Authority contracts shall be required to submit representations and certifications, on a form provided by the Airports Authority, 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 undertaken in connection with or related in any manner to the procurement that is or may be in violation of either of the Codes of Ethics. The Airports Authority will evaluate the information provided by the offeror 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 certification 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 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.
- (3) Use of procurement information by an Airports Authority employee or Board member 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 concession procurements and the methods used to evaluate contractors' proposals, and also 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; 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.

6.2.1 Solicitation Types - Competitive Proposals

6.2.1.1 When Request for Proposals (RFP) procedures are used

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.

6.2.1.2 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.

6.2.2 Solicitation Types –Advertised Sealed Bids (IFB)

The advertised sealed bid or Invitation for Bids (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.

6.2.2.1 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.

6.2.2.2 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.

6.2.2.3 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.

6.2.2.4 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.

6.2.3 **Types of Solicitations - Sole Source Negotiation**

This is a concession procurement method that is other than full and open competition. It occurs when there is only one responsible or one practicable source for the concession and there is no other source that will satisfy the Airports Authority's requirements.

The following are examples of situations in which the Airports Authority may use this sole source negotiation method to procure a concession directly from a sole source:

- (1) 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.
- (2) 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.

Sole source concession contracts, because they involve other than full and open competition, must be approved by the Board 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 the information required by Paragraph 6.1.7. 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 Manager, Procurement and Contracts Department, 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.

For sole source negotiation procurements in excess of \$200,000, notice will be published on the Airport's Authority's website, no less than fifteen (15) days prior to contract award, and will remain for a total of thirty (30) days, along with information describing the procurement, including the justification, stating that the Airports Authority has determined that only one source of the item is practicably available, identifying that sole source, stating the date on which the contract will be awarded, and stating that any responsible source may submit a statement of capabilities, along with a proposal or quote, no later than close of business on the fifteenth (15th) day after the date of publication of the above-referenced notice on the website. All submissions shall be reviewed by the Airports Authority to determine if competition exists.

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.

6.2.4 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 satisfies 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.

6.2.5 Preparation of Solicitations and Draft Contracts

6.2.5.1 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.

6.2.5.2 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 [Chief Revenue Officer or a 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.

6.2.5.3 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.

6.2.5.4 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 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 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 President and Airport Manager or the Vice President for Business Administration~~ Contracting Officer.

6.2.5.5 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 by 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 NPV 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 EC 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 EC.

6.2.5.6 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 a financial offer, the Airports Authority will issue an IFB.

6.2.5.7 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.

6.2.5.8 ACDBE Participation

It is the Airports Authority's goal to ensure that ACDBE 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 ACDBE goals that were arrived at through the process described in Paragraph 4.2.

6.2.5.9 Insurance

The contractor shall ensure that the concession contract includes the specific coverage required by the 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 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 contractor shall advise the Airports Authority of any cancellation, non-renewal, or material change in any policy within five (5) business days of notification to contractor of such action.

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.

6.2.5.10 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 a 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.

6.2.6 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). The Airports Authority also provides periodic e-mail notification of business opportunities to interested firms that have registered on-line (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 a newspaper of general circulation in the Washington, D.C. metropolitan area and in trade publications. 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. See also Paragraph 6.2.3 for advertisement of proposed sole source concession opportunities.

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

6.2.7 Solicitation Distribution

Solicitations will be available for downloading directly from the Airports Authority's website (www.mwaa.com). Solicitation amendments will be posted on the Airports Authority's website and will be distributed electronically to firms that are registered holders of the initial solicitation.

6.2.8 Prospective Offeror Lists

A list of prospective offerors for each solicitation is provided on the Airports Authority's website (www.mwaa.com). The list is provided for information purposes only with the understanding that the 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 it 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.

6.2.9 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.

6.2.10 Public Release of Information

The Airports Authority's Freedom of Information Policy, adopted by the Board, 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, which may include records created by or relating to offerors and contractors, are also exempt from release. In addition, records that are considered privileged 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) Price or financial offers and price schedules submitted by offerors, and abstracts of offers created by the Airports 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 notice of intent to award is sent to unsuccessful offerors, whichever occurs first. With respect to solicitations conducted under Invitation for Bids 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 EC members may be withheld from release.
- (4) Compilations of the scoring and scoring rationales of an EC 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 a written notice of intent to award is sent to unsuccessful offerors, whichever occurs first, but with the names and other identifiers of EC 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 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 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 this Paragraph 6.2.10 that are 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.

6.2.11 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 that it is needed to promote adequate competition, 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. 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.

6.2.12 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.

6.2.13 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 Department, 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.

6.2.14 Qualified proposals

Qualified proposals are those responses to an RFP in which the offeror has inserted language that places limits or exceptions concerning its 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.

6.2.15 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.

6.2.16 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) 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.

6.2.17 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 Department. Prior to award, the Contracting Officer shall make a written determination that the contract terms are fair and reasonable.

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/her representative, shall open the proposals in the presence of the Procurement and Contracts Department coordinator. The Contracting Officer, or his/her representative, and the Procurement and Contracts Department coordinator shall initial each proposal.

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 EC'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.

6.2.20 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 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 ACDBE participation goal or a Request for Good Faith Efforts waiver of the ACDBE 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 (5) business days from the date eliminated from competition.

6.3 PROPOSAL EVALUATION

6.3.1 Composition of Evaluation Committee

~~The Vice President for Business Administration~~The Chief Revenue Officer or the appropriate Vice President and Airport Manager is responsible for recommending to the Contracting Officer an EC when required to evaluate concession RFP proposals, and is also responsible for confirming that the composition of the EC is in compliance with the requirements of this Section 6.3.1. The Contracting Officer must approve all members of the EC. The size and composition of the EC shall be tailored to each individual concession procurement action. The EC should have a minimum of three 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 individuals to serve as EC members.

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 Chair of the EC may request other personnel to attend ~~meetings~~ in an advisory capacity.

6.3.2 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 EC 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 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 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 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 to

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:

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

$$100x = 5400$$

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

- (9) If 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 of the EC, Contracting Officer, or other individuals as designated by the Chair. The individual who makes the checks then reports the results to the EC 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 Chair of the EC and the Contracting Officer to be in the best interests of the Airports Authority, the EC 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.

6.3.3 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 [Chief Revenue Officer or a 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.

6.3.4 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 fifteen (15) days after the firm was advised it was 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, Procurement and Contracts Department, determines it is in the best interests of the Airports Authority to do so.

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.

6.3.5.1 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.

6.3.5.2 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.

6.3.6 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 made 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. 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 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.

6.3.7 Final Evaluation and Recommendation

At the conclusion of the EC's evaluation, which shall include the evaluation of any site visits, oral interviews or presentations, discussions and BAFOs, the EC voting members shall finalize their evaluation of the individual offerors. The Chair of the EC shall compile the EC's score or other forms of evaluation and determine the ranking of offerors based upon the EC'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 EC then will determine the apparent successful offeror and make a recommendation of award to the Contracting Officer.

6.3.8 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.

6.3.8.1 Commitment to ACDBE participation

An offeror's commitment to the ACDBE participation 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 ACDBE participation proposed by an offeror will be treated as relating to the offeror's responsibility.

6.3.8.2 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.

6.3.8.3 Licensing Requirements

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

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

6.3.8.5 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; it may include examination of financial statements and records and on-site inspections of offices and other concession locations.

6.3.8.6 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 five (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.

6.3.9 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~~CEO, staff shall not authorize contractors to commence performance before the contract is awarded, i.e., the date the contract is 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.

6.4.1 Apparent Successful Offeror

After the apparent successful offeror is identified by the Contracting Officer and after any ACDBE 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 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 they have reached verbally with the contractor are in writing and made a part of the contract, either in its main body 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.~~

6.4.2 Multiple Awards and Split Awards

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

6.4.3 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

6.5.1 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 fifteen (15) days after the firm was advised in writing by the Contracting Officer that it was 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 Chief Revenue Officer or a 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.

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, its 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.

6.5.2 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) ACDBE 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.

6.5.3 Correction of Mistakes after Award

6.5.3.1 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.

6.5.3.2 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).

6.5.3.3 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 the offer was made and that the mistake was mutual or, if unilaterally made by the contractor, it 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.

6.6.1 Phase 1

Phase 1 consists of a Request for Qualifications Information which requests all potential sources to submit qualification statements. The RFQI shall also 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.

6.6.2 Phase 2

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-COTR~~. No changes to the contract terms and conditions should be made without the written consent of the Contracting Officer.

6.7.1 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).

6.7.1.1 Modifications Within Scope vs. New RFP

A change in the work (whether goods, services or construction) of a contract, along with any resulting change in

the price or other terms of the contract, may be authorized by the Contracting Officer only after reviewing the circumstances giving rise to the change in work and determining that it falls within the general scope of the contract. A change in work that falls outside the general scope of the contract shall be treated as a new procurement.

The Procurement and Contracts Department shall establish procedures for the issuance of change orders and contract modifications. Those procedures should identify the factors that a Contracting Officer should consider when deciding whether a proposed change in the work to be performed under a contract falls within the general scope of the contract. Those factors shall include: (i) whether the function or nature of the change in work is so different than the function or nature of the work described in the solicitation seeking bids or proposals for the contract that the change in work would not then reasonably have been foreseen by potential bidders or offerors; (ii) whether the increase in contract price resulting from the change in work is so substantial that the change in work would not reasonably have been foreseen by potential bidders or offerors at the time of the solicitation; (iii) whether the extension of the period of contract performance resulting from the change in work is so substantial that the change in work would not reasonably have been foreseen by potential bidders or offerors at the time of the solicitation; and (iv) whether the change in work, had it been expressly included in the original solicitation, would have increased the number of bidders or offerors competing for the contract and, thereby, increased competition for the contract in a meaningful way.

Any change in work authorized by the Contracting Officer requires a modification of the contract which may be preceded by issuance of a change order. A change in work shall not be effective until a change order or contract modification has been approved and signed by the Contracting Officer, and it has been determined that budgeted funds for the change are available.

6.7.1.2 Negotiation of Contract Modifications

Modifications of concession contracts, consistent with Paragraph 6.7.1.1, are reached by mutual consent through negotiation. They must include the elements of a legal contract. Furthermore, no contract provision that is 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. For instance, consistent with Paragraph 6.7.1.1, the financial offer can be adjusted, the contract term can be changed and the premises can be altered.

6.7.1.3 Constructive Changes

Although all contract changes should be negotiated in advance and put in writing by the Contracting Officer, sometimes Airports Authority employees may take certain actions, verbal or otherwise, which may change the contract. Such changes are called "constructive changes." A constructive change occurs when the contractor acts in good faith in response to a directive from a ~~Contracting Officer's Technical Representative (COTR)~~ or other Airports Authority employee with apparent authority to issue the directive and when the contractor actions are clearly beneficial to the Airports Authority. In such a case, the Contracting Officer may recognize the benefit to the Airports Authority and issue a contract modification ratifying the "constructive change." However, the Contracting Officer has no obligation to do so.

6.7.2 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 Chief Revenue Officer or a 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 Chief Revenue Officer or a Vice President and Airport Manager ~~or the Vice President for Business Administration~~, must state the reasons for the request, and must be sent to the ~~Chief Operating Officer and Chief Executive Officer, and be accompanied by a concurrence or non-concurrence by the Vice President for Business Administration. CEO.~~

6.7.3 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

6.7.4 Contractor Performance

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

6.7.4.1 Documentation of Performance Critically Important

The Contracting Officer and the ~~Contracting Officer's Technical Representative~~ COTR 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.

6.7.4.2 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/her knowledge the facts and statements therein are

accurate and that they represent 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 and 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.

6.7.4.3 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 [Chief Revenue Officer or a 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.

6.7.4.4 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 [Chief Revenue Officer or a 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.

6.7.5 **ACDBE Compliance**

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

6.7.6 **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 Office of 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.

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.

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.

6.7.8 **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/her 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/her 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/her 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 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 they have been included in an annual budget approved by the Contracting Officer or the ~~Contracting Officer's Technical Representative~~. [COTR](#). 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 PROTESTS; SUSPENSION AND DEBARMENT

The provisions of Chapter 7, Protests, and Chapter 9, Suspension and Debarment, apply to Airports Authority concessions contracts and are incorporated by reference.

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.

Capital Construction Program (CCP) -- The Airports 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 and administer, on behalf of the Airports Authority, contracts and other contractual instruments such as modifications, change orders, task orders, delivery orders, purchase orders, and blanket purchase orders, 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 those offerors that 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 (CO) -- An ~~individual who~~ [employee to whom the CEO has been issued a Certification of Appointment with formally delegated written authorization to commit](#) ~~contracting authority and an employee to whom an~~

employee possessing contracting authority delegated by the CEO has in writing re-delegated all or a part of that contracting authority; such contracting authority includes the authority to obligate the Airports Authority by entering into executing on behalf of the Airports Authority contracts and other contractual instruments such as contract 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.

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.

May -- Denotes the permissive. However, the words "no person may..." mean that no person is 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 from the solicitation that goes to the substance of the offer and causes it to not comply with the requirements of the solicitation relating to 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 -- A person or firm that submits an offer in response to a solicitation. When used together with the term "bidder," the term "offeror" generally refers to a person or firm responding to a Request for Proposals.



Ronald Reagan Washington National Airport



Dulles Corridor Metrorail Project



Dulles Toll Road



Washington Dulles International Airport



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