510.01 PROCUREMENT MANUAL

On November 5, 2018, the Board of Directors approved revisions to the Agency’s Procurement Manual. The Manual is incorporated by reference into this Policy Manual as “Attachment A” to this Section 510, and shall apply to all Authority procurements, except where indicated therein.

EFFECTIVE DATE FOR REVISION: 11/05/2018
November 5, 2018
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CHAPTER 1 – GENERAL PROVISIONS

Section 1-100 – Authority, Purposes, Construction, and Application

§1-101 Authority and Purposes.

(1) The Hillsborough Transit Authority (the “Authority”) is a regional transportation authority and body politic and corporate created under Sections 163.565-165.572, Florida Statutes, also known as the “Regional Transportation Authority Law”.

(2) On October 3, 1979, the Authority’s Charter was filed with the Secretary of State of the State of Florida and subsequently amended and restated on January 21, 1980, to define how the Authority would be constituted, composed, and operated.

(3) The Authority’s enabling legislation, Section 163.568, Florida Statutes, entitled “Purposes and powers”, establishes that the Authority is granted the authorities under Subsections:

(a) 163.568(1) to:

(i) purchase, own, or operate, or provide for the operation of, transportation facilities;

(ii) contract for transit services;

(iii) conduct studies; and

(iv) contract with other governmental agencies, private companies and individuals;

(b) 163.568(2)(f) to “make contracts of every name and nature and to execute all instruments necessary or convenient for carrying out its business”; 

(c) 163.568(2)(g) to “enter into management contracts with any person or persons for the management of public transportation system owned or controlled by the authority”;

(d) 163.568(2)(h) to “enter into contracts, leases, or other transactions with any federal agency, the state, any agency of the state, or any other public body of the state”; and

(e) 163.568(2)(j) to “do all acts and things necessary or convenient for the conduct of its business and general welfare of the authority”; and

(f) 163.568(2)(k) to “prescribe and promulgate necessary rules and regulations”.

(4) The purpose of this Procurement Manual (this “Manual”) is to prescribe and promulgate necessary rules, regulations, policies, and procedures related to the procurement, management, control, contract administration, and disposal of supplies, services and construction and to define the terms in and implement the provisions of Chapter 163, Florida Statutes, and the Amendment and Restatement of the Charter of the Authority. To the extent required by law or agreement, this Manual is also intended to be consistent with all applicable laws, rules, and regulations of the United States Department of Transportation (“USDOT”), Federal Transit Administration (“FTA”), Florida Department of Transportation (“FDOT”), State of Florida, and other applicable federal, state or local laws, rules and regulations.

Attachment C to this Manual incorporates FTA C 4220.1F (Rev. 4, 3/18/2013) Appendix D Provisions, Certifications, Reports, Forms, And Other Matrices, Parts A through D, as Follows:

C. Certifications, Reports and Forms
D. Other Matters

(5) The underlying purposes of this Manual are to:

(a) provide for increased public confidence in the procurement policies followed by the Authority;
(b) ensure the fair and equitable treatment of all persons who deal with the Authority’s procurement system;
(c) provide increased economy in the Authority’s procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the Authority;
(d) foster effective, broad-based, full and open competition;
(e) provide safeguards for the maintenance of a procurement system of quality and integrity;
(f) obtain in a cost-effective and responsive manner the supplies, services, and construction required by the Authority to better serve businesses and residents in the Authority’s service area;
(g) promote purchasing and contracting opportunities for small and disadvantaged businesses, both as prime contractors and subcontractors;
(h) meet customer needs in terms of cost, quality and timeliness of the supplies, services or construction provided;
(i) promote positive relationships through courtesy and impartiality in all phases of the procurement and contracting processes, and provide for the timely and impartial resolution of protests, contract disputes and all other procurement issues; and
(j) handle confidential or proprietary information with proper consideration of the
ethical and legal ramifications of disclosure.

§1-102 **Supplemental General Principles of Law Applicable.**

(1) Unless displaced by the particular provisions of this Manual, the principles of law and equity, including the Uniform Commercial Code of the State of Florida, relevant merchant laws, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this Manual.

(2) In this Manual, unless the context requires otherwise:

   (a) words in the singular number include the plural, and those in the plural include the singular; and

   (b) words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

(3) The titles of chapters, sections, and subsections, or other titles contained in this Manual are for the convenience and reference only and in no way define, describe, extend, or limit the scope or intent of the substantive provision to which the title applies unless the context so requires.

(4) Unless otherwise stated, a listing of factors, criteria, or subjects to the policies contained in this Manual does not constitute an order of preference.

§1-103 **Requirement of Good Faith.**

This Manual requires all parties involved in the negotiation, performance, or administration of Authority contracts to act in good faith.

§1-104 **Application of This Manual.**

(1) This Manual applies only to contracts solicited or entered into after the effective date of the Manual unless the parties agree to their application to a contract solicited or entered into prior to the effective date.

(2) This Manual applies to every expenditure of public funds, irrespective of their source, including federal, state or local assistance monies by the Authority under any contract, except that they may not apply to:

   (a) specialized grants;

   (b) contracts between the Authority and other public entities;

   (c) any transaction for, or related to, the borrowing of money; or

   (d) where specific laws, rules or regulations specifically preclude the use of them.
(3) Nothing in this Manual shall prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(4) This Manual shall also apply to the disposal of Authority property and supplies, except real property.

§1-105 Severability.

If any provision of this manual or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of the Manual which can be given effect without the invalid provision or application, and to this extent the provisions of this Manual are declared to be severable.

§1-106 Specific Repealer.

All prior policies and resolutions of the Authority which are inconsistent with this Manual are superseded by it.

§1-107 Construction against Implicit Repealer.

Since this Manual reflects the general policies and procedures of the Authority, no part of it shall be deemed to be impliedly repealed or modified by subsequent action of the Authority if such construction can be reasonably avoided.

§1-108 Effective Date.

This Manual shall become effective at 12:01 A.M. on May 8, 2012.

Section 1-200 – Written Determinations

§1-201 Written Determinations.

(1) Where this Manual requires a written determination, the person responsible for making the determination may delegate its preparation, but the responsibility for and the execution of the determination shall not be delegated. The failure to make any written determination required by this Manual shall not affect the validity of any action taken with or relating to any other party.

(2) Written determinations shall set out sufficient facts, circumstances, and reasoning as will substantiate the specific determinations made, and filed in the appropriate solicitation or contract file and shall be open to public inspection as required by applicable law.

Section 1-300 – Definitions

§1-301 Definitions.

The words defined in “Attachment A, Definitions” to this Manual shall have the meanings set forth therein whenever they appear throughout the Manual, unless the context in which they are used clearly requires a different meaning or a different definition is prescribed for a particular
section or provision.

Section 1-400 – Other

§1-401 Public Access to Procurement Information.

(1) Procurement information shall be a public record to the extent provided by state law and shall be available to the public as provided by state law.

(2) All solicitations shall contain a provision requiring all bids and proposals to identify any information an offeror believes to be exempt from disclosure as trade secrets or commercial or financial information, however, the disclosure of such information to the public will be governed by state law.

§1-402 Authorization for the Use of Electronic Transmissions.

The use of electronic media, including acceptance of electronic signatures, is authorized consistent with the State of Florida’s applicable statutory, regulatory or other guidance for use of such media, so long as such guidance provides for:

(a) appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and

(b) accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.
CHAPTER 2 – PROCUREMENT AUTHORITY AND OFFICIALS

Section 2-100 – Procurement Authority and Responsibility

§2-101 Board of Directors.

(1) Policies. The Board of Directors has the authority and responsibility to promulgate policies governing the procurement, management, control, and disposal of any and all supplies, services, and construction required by the Authority.

(2) Approve Contracting Officers. The Board of Directors shall confer, by resolution of the Board of Directors, general authorizations to named Authority employees to execute purchases and enter into contracts on behalf of the Authority. These individuals, also known as Contracting Officers, shall be recommended to the Board of Directors by the Chief Executive Officer.

(3) Contracts and Contract Modification Approvals.

(a) Contracts. The Board of Directors shall approve by resolution all contracts greater than or equal to $100,000 that are not for standard supplies, services or construction. In addition, the Board of Directors shall approve by resolution all contracts covered by Section 3-207 (Special Procurements) regardless of any dollar threshold.

(b) Contract Modifications. The Board of Directors shall approve by resolution all contract modifications associated with contracts that were originally approved by the Board of Directors and are greater than or equal to (i) $100,000, or (ii) five percent (5%) of the cumulative contract amount, whichever is less, unless the original authorizing resolution states otherwise. For contracts awarded under Section 3-207 (Special Procurements), the Board of Directors shall approve all contract modifications involving additional funds.

(c) “Standard Supplies and Services” are supplies or services that are regularly used by the Authority in the course of normal business operations. Examples include vehicle parts, grounds keeping and janitorial services, office and janitorial supplies, ordinary equipment (such as personal computers, copier and postage machines), etc.

(4) Audit and Monitor. The Board of Directors shall periodically audit and monitor the implementation of this Manual.

§2-102 Chief Executive Officer.

(1) The Chief Executive Officer shall be responsible for the procurement of supplies, services, and construction in accordance with these policies, as well as the management and disposal of supplies.
(2) The Chief Executive Officer shall:

(a) oversee the procurement of all supplies, services, and construction needed by the Authority;

(b) supervise and control all assets, equipment, and inventories of supplies belonging to the Authority;

(c) supervise the sell, trade, or otherwise dispose of surplus assets, equipment, or supplies belonging to the Authority;

(d) award contracts and contract modifications not covered by Section 2-101(3)(a) and (b) above;

(e) establish and maintain programs and procedures for specification development, contract administration, and inspection and acceptance of supplies, services, and construction; and

(f) ensure compliance with this manual by reviewing and monitoring procurements conducted by the Authority.

§2-103 Head of the Procurement Department.

The head of the Procurement Department shall be responsible for the operational procedures governing the internal functions of procurement, have relevant, recent experience in public procurement and in the procurement of supplies, services or construction and be a person with demonstrated managerial and organizational ability. The head of the Procurement Department shall:

(a) procure or supervise the procurement of all supplies, services, and construction needed by the Authority;

(b) supervise the sell, trade, or otherwise dispose of surplus assets, equipment, or supplies belonging to the Authority;

(c) establish and maintain programs for specification development, contract administration, and inspection and acceptance of supplies, services, and construction; and

(d) ensure compliance with this Manual by reviewing and monitoring procurements conducted by the Authority.
Section 2-200 - Delegations of Authority

§2-201 Authority to Delegate.
(1) The Chief Executive Officer may delegate authority to purchase certain supplies, services, or construction to named persons approved by the Board of Directors.

(2) The authority conferred on the Chief Executive Officer in these policies with respect to the following matters shall not be delegated:
   (a) appointment of Contracting Officers under Section 2-203;
   (b) deviations from the Procurement Manual under Section 2-301;
   (c) reduction of bond amounts under Section 5-202(2);
   (d) stay of procurements during protests under Section 9-206; and
   (e) authority to debar or suspend under Section 9-300.

§2-202 Delegations and Revocations of Authority.
(1) The Chief Executive Officer’s delegations of authority shall be in writing and shall specify:
   (a) the activities or functions authorized;
   (b) any limits or restrictions on the delegated authority; and
   (c) the duration of the delegation.

(2) Any authority delegated by the Chief Executive Officer may be revoked at any time and without prior approval of the Board.

§2-203 Contracting Officers and Ratifications.
(1) The selection, appointment, and terminations of appointments of Contracting Officers shall be made only by the Chief Executive Officer. In selecting contracting officers, the Chief Executive Officer shall consider public contract experience, training, education, judgment, character, and ethics.

(2) Appointment of Contracting Officers shall be made in a Certificate of Appointment signed by the Chief Executive Officer. The Certificate of Appointment shall include the limits associated with each appointment (i.e., dollar thresholds, types of actions, etc.) and include a statement which reads: “Unless sooner revoked, this appointment is effective as long as the appointee named herein is an employee of the Authority.”
(3) Procurement or contracting actions undertaken by Authority employees who have not been appointed as a Contracting Officer shall be voidable unless ratified by the Chief Executive Officer. All such ratifications shall be reported to the Board of Directors at its next Board meeting.

Section 2-300 - Deviations from Procurement Manual

§2-301  Deviations from Procurement Manual.

The Chief Executive Officer may approve a one-time deviation from this Manual with respect to an individual procurement; provided, however, that any such deviation (together with a written description of the circumstances and the justification therefore) shall be (1) approved in advance by the Chair of the Board of Directors, (2) maintained in the procurement file, and (3) provided in a written report to the Board of Directors at its next meeting.

§2-302  Special Exemptions from Procurement Manual.

Unless otherwise specified by this Manual, the following supplies or services need not be procured through the Procurement Department, but shall nevertheless be subject to the requirements of this Manual:

(a)  Employee/Benefits:

(i)  professional licenses, dues, memberships and association fees;

(ii) conference and seminar registrations;

(iii) employee and Board Member travel advances, reimbursements and expenses;

(iv) commercially available off-site training offered to the general public at published price lists and not to exceed $3,000;

(v)  unemployment fees;

(vi) tuition reimbursement;

(vii) employee payroll deductions (i.e., payroll taxes, recreation/coffee fund, union dues, etc.);

(viii) pension disbursements; and

(ix)  Workers’ Compensation and health insurance claim payments made by Third Party Administrators (TPA). Fees paid to TPAs, however, must be procured under this Manual.

(b)  Agency:

(i)  books, periodicals, and subscription services;
(ii) directed advertising (television, radio, newspapers, magazines, outdoor boards, kiosks, etc.);

US Postal Service fees and services (including UPS, FedEx, or other courier/mail services
(iii) federal, state, county, and municipal fees and assessments;
(iv) Board Member fees and reimbursements;
(v) federal, state, and local tax payments (real estate, city, payroll, sales, etc.);
(vi) patron refunds;
(vii) utilities that cannot be competed;
(viii) State of Florida vehicle registrations, licensing, etc.;
(ix) disbursements from self-insured funds for claims handling through settlements or final resolutions (excluding settlements on contract claims);

(x) legal settlements; and
(xi) agency wide sponsorships and memberships.

(c) Finance Department:
(i) petty cash disbursements;

(ii) debt financing costs; rating agencies, commercial paper dealers, and liquidity banks; and

(iii) investments.

(d) Real Estate:
(i) real estate acquisitions, leases;

(ii) business and individual relocation expense (due to real estate acquisitions); and

(iii) water utilities and utilities associated with real estate acquisitions.

Section 2-400 - Changes to Procurement Manual

§2-401 Deviations and Changes to Procurement Manual.

(1) Deviations. The Chief Executive Officer is empowered to approve one-time deviations from this Manual in accordance with the provisions of Section 2-300 (Deviations from Procurement Manual). All one-time deviations shall be reported by the Chief Executive Officer in a written report to the Board of Directors at its next meeting.
(2) **Permanent and Minor Insignificant Changes.** No permanent change shall be made to this Manual without the express approval of the Board of Directors, except for minor, insignificant changes that are matters of form rather than substance, such as:

- (a) format style changes;
- (b) typographical errors;
- (c) punctuation and transposition errors;
- (d) renumbering of pages; and
- (e) corrections to or additions of Tables of Contents, Indexes or other tools created to better navigate through the Manual.

The Chief Executive Officer shall recommend permanent changes to this Manual to the Board of Directors. All such changes shall be reviewed by the General Counsel. With the exception of the changes noted in Subsection (2) above, all Procurement Manual changes shall be approved by resolution of the Board of Directors.

(3) Following their approval, the Chief Executive Officer shall incorporate changes to this Manual and publish them to the agency in the form of a circular. Also, these changes shall be published on the Authority’s intranet and internet websites.

**Section 2-500 - Procurements Using Federal Funds**

§2-501 **Procedures.**

Procurements involving the use of federal assistance grant funds will be conducted in accordance with the terms of this Manual and requirements of the grantor. In the instance of Federal Transit Administration (FTA) grants, the requirements contained in the grant itself, the FTA Circular C 4220.1F in effect on the applicable date, and any other requirements of the Federal Government will be followed. In the event of any inconsistency with this Manual, the provisions of any required federal rules, regulations or grant terms shall control.

§2-502 **Procurement Clauses.**

(1) The Chief Executive Officer shall promulgate required clauses to be used in all solicitations and contracts. These clauses shall be reviewed by the Legal Department for legal sufficiency prior to their use.

(2) Where procurements involve federal funds, the Head of the Procurement Department shall ensure that all of the required federal clauses, provisions, representations and certifications have been appropriately incorporated, as outlined in FTA’s Circular C 4220.1F or any other applicable federal laws or regulations.

(3) Offerors are required to acknowledge compliance with Buy America provisions in Exhibit U of the Solicitation. Failure to sign the Buy America Certificate of Compliance will result in the offeror(s) being deemed non-responsive to the Solicitation.
CHAPTER 3 – SOURCE SELECTION AND CONTRACT FORMATION

Section 3-100 – General Provisions

§3-101 Definitions of Terms Used in This Chapter.

Prequalification for Inclusion on Bidders Lists means determining in accordance with Section 3-400 (Qualifications and Duties) that a prospective bidder or offeror satisfies the criteria established for being included on the bidders list.

§3-102 General Provisions.

§3-102.01 Extension of Time for Bid or Proposal Acceptance.

After opening bids or proposals the Contracting Officer may request bidders or offerors to extend the time during which the Authority may accept their bids or proposals, provided that, with regard to bids, no other change is permitted. The reasons for requesting such extension shall be documented in writing and kept in the procurement file.

§3-102.02 Extension of Time on Indefinite Quantity Contracts.

The time of performance of an indefinite quantity contract may be extended upon agreement of the parties, provided the extension is for ninety (90) days or less and a Contracting Officer one level above the responsible Contracting Officer determines in writing that it is not practical to award another contract at the time of such extension. Extensions beyond ninety (90) days are not permitted.

§3-102.03 Only One Bid or Proposal Received.

(1) One Bid Received. If only one responsive bid is received in response to an Invitation for Bids (including multi-step bidding), an award may be made to the single bidder if the Contracting Officer finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for re-solicitation. Otherwise the bid may be rejected pursuant to the provisions of Section 3-300 (Cancellation of Invitations for Bids or Request for Proposals) and:

(a) new bids or offers may be solicited;

(b) the proposed procurement may be cancelled; or

(c) if a Contracting Officer above the level of the procuring Contracting Officer determines in writing that the need for the supply, service or construction continues, but that the price of the one bid is not fair and reasonable and there is no time for re-solicitation, or re-solicitation would likely be futile, the procurement may then be conducted under Section 3-205 (Sole Source Procurement) or Section 3-206 (Emergency Procurements), as appropriate.
(2) **One Proposal Received.** If only one proposal is received in response to a Request for Proposals, a Contracting Officer one level above the procuring Contracting Officer may:

   (a) either make an award in accordance with the procedures set forth in Section 3-203 (Competitive Sealed Proposals);

   (b) conduct the procurement under Section 3-205 (Sole Source Procurement); or

   (c) if time permits, resolicit for the purpose of obtaining competitive sealed proposals.

§3-102.04 **Multiple or Alternate Bids or Proposals.**

Unless multiple or alternate bids or proposals are specifically provided for, the solicitation shall state that such bids or proposals shall not be accepted. When prohibited, multiple or alternate bids or proposals shall be rejected, provided that if a bidder clearly indicates a responsive base bid, it shall be considered for award as though it were the only bid or proposal submitted by the bidder or offeror. The provisions of this Section shall be set forth in the solicitation, and if multiple or alternate bids or proposals are allowed, the solicitation shall specify their treatment.

§3-102.05 **Determination of Contractual Terms and Conditions.**

The Contracting Officer is authorized to determine the contractual provisions, terms, and conditions of solicitations and contracts; provided, such provisions, terms, and conditions are not contrary to this Manual or any law or regulation governing the procurement.

§3-102.06 **Bid and Performance Bonds for Supply Contracts or Service Contracts.**

Bid and performance bonds or other security may be required for supply contracts or service contracts as the Contracting Officer deems advisable to protect the interest of the Authority. Any such requirements must be set forth in the solicitation. Bid or performance bonds should not be used as a substitute for a determination of bidder or offeror responsibility. Section 5-201 (Bid Guarantee) and Section 5-202 (Contract Performance and Payment Bonds) set forth bonding requirements applicable to construction contracts and may be considered when establishing any such requirements for supply contracts or service contracts.

§3-102.07 **Conditioning Bids or Proposals Upon Other Awards Not Acceptable.**

Any bid or proposal which is conditioned upon receiving award of both the particular contract being solicited and another Authority contract shall be deemed nonresponsive and not acceptable.

§3-102.08 **Purchase Requests Review.**

(1) **Contracting Officer's Authority to Reject.** When the Contracting Officer, after consultation with the requesting department, decides that processing the purchase request is clearly not in the best interest of the Authority or that further review is needed, such officer shall
return such purchase request to the requesting department. A statement of the reasons for its return shall accompany the returned request. Examples of reasons a purchase request may be returned include, but are not limited to:

(a) the request can be satisfied from existing Authority stocks or Authority contracts;

(b) the request exceeds agency needs;

(c) the supplies, services, or construction requested could be procured more economically at a different time without detriment to the Authority; or

(d) the quality requested is inconsistent with the Authority’s standards and usage.

§3-102.09 Unsolicited Offers.

(1) Defined. An unsolicited offer is any offer other than one submitted in response to a solicitation.

(2) Processing of Unsolicited Offers. Unsolicited offers that Authority personnel wish to consider must be referred to the Procurement Department. The Contracting Officer shall have final authority with respect to evaluation, acceptance, and rejection of such unsolicited offers.

(3) Conditions for Consideration. To be considered for evaluation an unsolicited offer:

(a) must be in writing;

(b) must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the Authority;

(c) must be unique or innovative to the Authority’s use;

(d) must demonstrate that the proprietary character of the offer warrants consideration of the use of sole source procurement; and

(e) may be subject to testing under terms and conditions specified by the Authority.

(4) Evaluation. The unsolicited offer meeting the requirements of (3) above shall be evaluated to determine its utility to the Authority and whether it would be to the Authority’s advantage to enter into a contract based on such offer. If an award is to be made on the basis of such offer, the sole source procedures in Section 3-205 (Sole Source Procurement) shall be followed.

(5) Confidentiality. Any written request for confidentiality of data contained in an unsolicited offer that is made in writing shall be honored if permitted by law. If an award is contemplated, confidentiality of data shall be agreed upon by the parties and governed by the
provisions of the law. If agreement cannot be reached on confidentiality, the Authority may reject the unsolicited offer.

(6) **Rejection of Unsolicited Offers.** The Authority is under no obligation to consider and may reject any unsolicited offer.

**§3-102.10 Novation or Change of Name.**

(1) **No Assignment.** No Authority contract is transferable, or otherwise assignable, without the written consent of the Contracting Officer provided, however, that a contractor may assign monies receivable under a contract after proper notice to the Authority.

(2) **Recognition of a Successor in Interest; Novation.** When in the best interest of the Authority, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that:

(a) the transferee assumes all of the transferor's obligations;

(b) the transferor waives all rights under the contract as against the Authority; and

(c) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

(3) **Change of Name.** When a contractor requests to change the name in which it holds a contract with the Authority, the Contracting Officer shall, upon receipt of a document indicating such change of name (for example, an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting contractor to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed.

**§3-102.11 Contracting for Installment Purchase Payments, Including Interest.**

Supply contracts may provide for installment purchase payments, including interest charges, over a period of time. Installment payments, however, should be used judiciously to achieve economy and not to avoid budgetary restraints and shall be justified in writing by the Contracting Officer, who shall be responsible for ensuring that statutory or other prohibitions are not violated by use of installment provisions and that all budgetary, funding, or other required prior approvals are obtained. No such agreement shall be used unless provision for installment payments is included in the solicitation document.

**§3-102.12 Purchase of Items Separately from Construction Contract.**

The Contracting Officer is authorized to determine whether a supply item or group of supply items shall be included as a part of, or procured separately from, any contract for construction. All such determinations shall be made in writing and maintained in the procurement files.
§3-102.13 Purchase Necessity.

(1) Review of Procurement Requisitions for Purchase Necessity. The Contracting Officer shall evaluate each individual procurement requisition to avoid the purchase of unnecessary supplies and services, duplicative items and quantities or options the Authority does not intend to use or whose use is unlikely.

(2) Limit on Assignments. The Authority may contract only for its current and reasonably expected needs and may not add quantities or options solely to permit assignment to a third party at a later date. These limits on assignments, however, do not preclude joint procurements that are entered into simultaneously by two or more parties to obtain advantages unavailable for smaller procurements.

§3-102.14 Procurement Size.

(1) General. The Contracting Officer shall consider whether to consolidate or break out procurements to obtain a more economical purchase.

(2) Joint Procurements. Where the Contracting Officer determines that it is economically advantageous to enter into a joint procurement with others participants that have similar needs, the Contracting Officer may act as a participant to the procurement or conduct the procurement and assign to other participants responsibilities for administering the contract. Participation in a joint procurement does not relieve the Authority from the requirements and responsibilities it would have if it were procuring the property or services itself, and does not relinquish responsibility for the actions of other participants merely because the primary administrative responsibility for a particular action resides in an entity other than the Authority.

(3) Smaller Procurements in Support of DBEs/SBEs. The Contracting Officer may break procurements into smaller elements to provide greater opportunities for Disadvantaged Business Enterprises (DBEs) and Small Business Enterprises (SBEs), however, absent efforts to foster greater opportunities for DBEs/SBEs, the Authority may not split a procurement into smaller elements merely to gain the advantages of small purchase procedures.

§3-102.15 Lease Versus Purchase.

To obtain the best value, the Authority shall review lease versus purchase alternatives for acquiring property and equipment and, if necessary, should obtain an analysis to determine the more economical alternative. The Authority may use capital assistance to finance the costs of leasing eligible property if leasing is more cost effective than full ownership. Before leasing an asset, the Contracting Officer shall make a written comparison of the cost of leasing the asset compared with the cost of purchasing or constructing the asset. Costs used in the comparison must be reasonable, based on realistic current market conditions and the expected useful service life of the asset.
§3-102.16  Prohibited Use of Solicitation Requirements that Unduly Restrict Competition

Solicitations shall be designed to maximize competition and eliminate features that unduly restrict competition, such as excessive improper prequalification of firms, unreasonable qualifications placed on firms or requiring unnecessary experience, retainer contracts, excessive bonding, unjustified use of brand name only procurements, in-state or local geographic restrictions or preferences (except those permitted by law or regulation), and arbitrary actions in the procurement process itself.

§3-102.17  Geographic Preference.

(1) Use of geographic preferences in evaluating bids or proposals is generally discouraged because it may limit full and open competition or may be prohibited by laws or regulations applicable to the Authority. In addition, geographic preferences may create an unintended consequence of local businesses being penalized by jurisdictions outside of the Authority’s service area.

(2) Where geographic preferences are used, the Contracting Officer shall prepare a written record showing the basis for the decision and the record shall be made a part of the procurement file.

Section 3-200 – Methods of Source Selection

§3-201  Methods and Dollar Threshold for Full and Open Competition.

§3-201.01  Methods and Responsibility.

(1) Unless otherwise authorized by law or regulation, all Authority contracts shall be awarded by one of the following procurement methods:

(a) Section 3-202 (Competitive Sealed Bidding);

(b) Section 3-203 (Competitive Sealed Proposals);

(c) Section 3-204 (Small Purchases);

(d) Section 3-205 (Sole Source Procurement);

(e) Section 3-206 (Emergency Procurements);

(f) Section 3-207 (Special Procurements); and

(g) Section 5-104 (Architectural and Engineering Services).

(2) The Procurement Department is responsible for soliciting all supplies, services and construction. Only Procurement Department Personnel may solicit quotes, bids or proposals from prospective offerors.
§3-201.02 **Threshold for Full and Open Competition.**

(1) Procurements that are anticipated to be greater than or equal to $250,000 must be fully and openly competed, except where specified in Section 3-200. When calculating whether procurement must be fully and openly competed, the full amount of the anticipated contract, including all items, contract years and options must be considered.

(2) Prices obtained for services, supplies and services greater than or equal to $250,000 and were not fully and openly competed may not be accepted, except where specified elsewhere in Section 3-200.

(3) Procurement requirements shall not be artificially divided or reduced to avoid any additional procurement requirements applicable to larger procurements, to create a small purchase or to circumvent approval requirements of the Board of Directors.

§3-202 **Competitive Sealed Bidding; Multi-Step Sealed Bidding.**

§3-202.01 **General.**

Competitive sealed bidding is the preferred method for the procurement of supplies, services, or construction. The provisions of this Section 3-202 (Competitive Sealed Bidding; Multi-Step Sealed Bidding) apply to every procurement made by competitive sealed bidding, including multi-step sealed bidding.

§3-202.02 **The Invitation for Bids.**

(1) *Use.* The Invitation for Bids shall be used to initiate competitive sealed bid procurement.

(2) *Content.* The Invitation for Bids shall include instructions and information to bidders concerning the bid submission requirements, including:

   (i) the time and date set for receipt of bids;

   (ii) the address of the office to which bids are to be delivered;

   (iii) the maximum time for bid acceptance by the Authority;

   (iv) the purchase description;

   (v) all evaluation factors and their relative importance, delivery or performance schedule;

   (vi) such inspection and acceptance requirements as are not included in the purchase description;

   (vii) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable; and

   (viii) any other special information.
(3) **Incorporation by Reference.** The Invitation for Bids may incorporate documents by reference provided that the Invitation for Bids specifies where such documents can be obtained.

(4) **Acknowledgement of Amendments.** The Invitation for Bids shall require the acknowledgement of the receipt by offerors of all amendments issued.

§3-202.03 **Bidding Time.**

Bidding time is the period of time between the date of distribution of the Invitation for Bids and the time and date set for receipt of bids. In each case, bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of twenty-one (21) days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined in writing by the Contracting Officer.

§3-202.04 **Bidder Submissions.**

(1) **Bid Form.** The Invitation for Bids shall provide a form which shall include space in which the bid price shall be inserted and which the bidder shall sign and submit along with all other necessary submissions.

(2) **Telegraphic Bids.** The Invitation for Bids may state that telegraphic and mailgram bids will be considered whenever they are received in hand at the designated office by the time and date set for receipt of bids. Such telegraphic or mailgram bids shall contain specific reference to the Invitation for Bids; the items, quantities, and prices for which the bid is submitted; the time and place of delivery; and a statement that the bidder agrees to all the terms; conditions, and provisions of the Invitation for Bids.

(3) **Bid Samples and Descriptive Literature.** Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid. The Invitation for Bids shall state that bid samples or descriptive literature should not be submitted unless expressly requested and that, regardless of any attempt by a bidder to condition the bid, unsolicited bid samples or descriptive literature which are submitted at the bidder's risk will not be examined or tested, and will not be deemed to vary any of the provisions of the Invitation for Bids.

§3-202.05 **Public Notice.**

(1) **Distribution.** Invitations for Bids or Notices of the Availability of Invitations for Bids shall be mailed or otherwise furnished to a sufficient number of potential bidders for the purpose of securing competition. Notices of Availability shall indicate where, when, and for how long Invitations for Bids may be obtained; generally describe the supply, service, or construction desired; and may contain other appropriate information. (See also Section 3-202.06 (Bidders Lists). Where appropriate the Contracting Officer may require payment of a fee or a deposit for the supplying of the Invitation for Bids.

(2) **Publication.** Every full and open competition shall be publicized in a newspaper of general circulation, unless otherwise indicated by law or regulation. In addition, they may be publicized;

   (a) in a newspaper of local circulation in the area pertinent to the procurement;

   (b) in industry media;
(c) through electronic mailing lists, through the internet, agency web site, or other publicly accessible electronic media, or

(d) in a government publication designed for giving public notice.

(2) Public Availability. A copy of the Invitation for Bids shall be made available for public inspection at the Authority's offices and on its public website.

§3-202.06 Bidders Lists.

(1) Purpose. Bidder’s lists shall be compiled to provide the Authority with the names of businesses that may be interested in competing for various types of Authority contracts. Unless otherwise provided, inclusion of the name of a business does not indicate whether the business is responsible in respect to a particular procurement or otherwise capable of successfully performing an Authority contract.

(2) Public Availability. Names and addresses on bidder’s lists shall be available upon request for public inspection provided these lists shall not be used for private promotional, commercial or marketing purposes.

§3-202.07 Pre-Bid Conferences.

Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received the Invitation for Bids. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment as provided in Section 3-202.08 (Amendments to Invitations for Bids). If a transcript is made it shall be a public record.

§3-202.08 Amendments to Invitations for Bids.

(1) Form. Amendments to Invitations for Bids shall be identified as such and shall require that the bidder acknowledge receipt of all amendments issued. The amendment shall reference the portions of the Invitation for Bids it amends.

(2) Distribution. Prospective bidders known to have received the Invitation for Bids shall be notified of the Amendments.
(3) **Timeliness.** Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, such time shall be increased to the extent possible in the amendment or, if necessary, by telegram or telephone and confirmed in the amendment.

(4) Amendments should be used to:

(a) make any changes in the Invitation for Bids such as changes in quantity, purchase descriptions, delivery schedules, and opening dates;

(b) correct defects or ambiguities; or

(c) furnish to other bidders information given to one bidder if such information will assist the other bidders in submitting bids or if the lack of such information would prejudice the other bidders.

§3-202.09 **Pre-Opening Modification or Withdrawal of Bids.**

(1) **Procedure.** Bids may be modified or withdrawn by written notice received in the office designated in the Invitation for Bids prior to the time and date set for bid opening. An electronic or telegraphic modification or withdrawal received from the bidder or, as applicable, the receiving telegraph company office prior to the time and date set for bid opening will be effective provided that there is objective evidence, in electronic form or from the receiving telegraph company, confirming that the message was received at prior to the time and date set for bid opening.

(2) **Disposition of Bid Security.** If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.

(3) **Records.** All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

§3-202.10 **Late Bids, Late Withdrawals, and Late Modifications.**

(1) **Definition.** Any bid received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after the time and date set for opening of bids at the place designated for opening is late.

(2) No late bid, late modification, or late withdrawal will be considered unless received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of Authority personnel directly serving the procurement activity.

(3) **Notice.** Bidders submitting late bids that will not be considered for award shall be notified as soon as practicable.

(4) **Records.** Records equivalent to those required in Subsection 3-202.9 (3) (Pre-Opening Modification or Withdrawal of Bids, Records) shall be made and kept for each late bid, late modification, or late withdrawal.
§3-202.11 Receipt, Opening, and Recording of Bids.

(1) Receipt. Upon its receipt, each bid and modification shall be time-stamped but not opened and shall be stored in a secure place until the time and date set for bid opening. Bids submitted through electronic means shall be received in such a manner that the time and date of submittal, along with the contents of such bids shall be securely stored until the time and date set for bid opening.

(2) Opening and Recording. Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time, date, and place designated in the Invitation for Bids. The name of each bidder, the bid price, and such other information as is deemed appropriate by the Contracting Officer, shall be read aloud or otherwise made available. Such information also shall be recorded at the time of bid opening; that is, the bids shall be tabulated or a bid abstract made. The names and addresses of required witnesses shall also be recorded at the opening. The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in Subsection 3-202.11 (3). Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Price and makes and model or catalogue of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary. Bid submitted through electronic means shall be received in such a manner that the requirements of this Section can be readily met.

(3) Confidential Data. The Contracting Officer shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the Contracting Officer shall inform the bidders in writing that portions of the bids will be disclosed and that, unless the bidder protests under Chapter 9 (Administrative Remedies and Appeals), the bids will be so disclosed and the bids shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

§3-202.12 Mistakes in Bids.

(1) General. Correction or withdrawal of a bid because of an inadvertent, non-judgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a nonjudgmental mistake is permissible but only to the extent it is not contrary to the interest of the Authority or the fair treatment of other bidders.

(2) Mistakes Discovered Before Opening. A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in Section 3-202.9 (Pre-Opening Modification or Withdrawal of Bids).

(3) Confirmation of Bid. When the Contracting Officer knows or has reason to conclude that a mistake has been made, such officer should request the bidder to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or
a bid is unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth in Subsections 3-202.12 (4) through 3-202.12 (6) are met.

(4) **Mistakes Discovered After Opening but Before Award.** This Subsection sets forth procedures to be applied in three situations described in Subsections 3-202.12 (5) (a) through 3-202.12 (5) (c) in which mistakes in bids are discovered after the time and date set for bid opening but before award.

(5) **Minor Informalities.** Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The Contracting Officer shall waive such informalities or allow the bidder to correct them depending on which is in the best interest of the Authority. Examples include the failure of a bidder to:

(a) return the number of signed bids required by the Invitation for Bids;

(b) sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound; or

(c) acknowledge receipt of an amendment to the Invitation for Bids, but only if:

(i) it is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or

(ii) the amendment involved had a negligible effect on price, quantity, quality, or delivery

(6) **Mistakes Where Intended Correct Bid is Evident.** If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

(7) **Mistakes Where Intended Correct Bid is Not Evident.** A bidder may be permitted to withdraw a low bid if:

(a) a mistake is clearly evident on the face of the bid document but the intended correct is not similarly evident, or

(b) the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.

(8) **Mistakes Discovered After Award.** Mistakes shall not be corrected after award of the contract except where a Contracting Officer above the level of the procuring Contracting Officer makes a written determination that it would be unconscionable not to allow the mistake to be corrected.
(9) **Determinations Required.** When a bid is corrected or withdrawn, or correction or withdrawal is denied, under Subsections 3-202.12 (4) or 3-202.12 (5), the Contracting Officer agency shall prepare a written determination showing that the relief was granted or denied in accordance with this Subsection, except that the Contracting Officer shall prepare the determination required under Section 3-202.12 (4) (a).

§3-202.13  **Bid Evaluation and Award.**

(1) **General.** The contract is to be awarded "to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids." The Invitation for Bids shall set forth the requirements and criteria which will be used to determine the lowest responsive bidder. No bid shall be evaluated for any requirement or criterion that is not disclosed in the Invitation for Bids.

(2) **Responsibility and Responsiveness.** Responsibility of prospective contractors is covered by Section 3-401 (Responsibility of Bidders and Offerors). Responsiveness is defined in Attachment A to this Manual. “Responsive bidder” means a person who has submitted a bid which conforms in all material respects to the Invitation for Bids.

(3) **Product Acceptability.** The Invitation for Bids shall set forth any evaluation criterion to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for accomplishing any of the following prior to award:

   (a) inspection or testing of a product prior to award for such characteristics as quality or workmanship;

   (b) examination of such elements as appearance, finish, taste, or feel; or

   (c) other examinations to determine whether it conforms with any other purchase description requirements.

The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine that a bidder's offering is acceptable as set forth in the Invitation for Bids. Any bidder's offering which does not meet the acceptability requirements shall be rejected as nonresponsive.

(4) **Determination of Lowest Bidder.** Following determination of product acceptability as set forth in this Section, if any is required, bids will be evaluated to determine which bidder offers the lowest cost to the Authority in accordance with the evaluation criteria set forth in the Invitation for Bids. Only objectively measurable criteria which are set forth in the Invitation for Bids shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost, and ownership or life cycle cost formulas. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible such evaluation factors shall:
(a) be reasonable estimates based upon information the Authority has available concerning future use; and

(b) treat all bids equitably.

(5) Restrictions. Nothing in this Section shall be deemed to permit contract award to a bidder submitting a higher quality item than that designated in the Invitation for Bids if such bidder is not also the lowest bidder as determined under this Section. Further, this Section does not permit negotiations with any bidder.

§3-202.14 Low Tie Bids.

(1) Definition. Low tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the Invitation for Bids.

(2) Award. Award shall not be made by drawing lots, except as set forth below, or by dividing business among identical bidders. In the discretion of the Contracting Officer, tie award shall be made in a manner that will discourage tie bids and a written determination is made so stating, award may be made by drawing lots.

(3) Procedures. Procedures which can be used to resolve a low tie bids situation include:

(a) awarding the contract to a business providing property produced or manufactured in Florida or to a business that otherwise maintains a place of business in the Authority's service area;

(b) awarding to the tie bidder which is a Disadvantaged Business Enterprise or a Small Business Enterprise, as defined by policies of the Authority;

(c) where identical low bids include the cost of delivery, awarding the contract to the tie bidder farthest from the point of delivery;

(d) awarding the contract to the tie bidder who received the previous award and continuing to award succeeding contracts to the same bidder so long as all low bids are identical; or

(e) rejecting all bids and negotiating a price with the tie bidders provided that the contract shall be let for less than the lowest responsive bid received.

(4) Record. Records shall be made of all Invitations for Bids on which tie bids are received showing at least the following information:

(a) the identification number of the Invitation for Bids;

(b) the supply, service, or construction; and

(c) a listing of all the bidders and the prices submitted.
§3-202.15 Award.

(1) The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. In the event all bids for a construction project exceed available funds as certified by the appropriate fiscal officer and the lowest responsive and responsible bid does not exceed such funds by more than five percent, the Chief Executive Officer is authorized in situations where time or economic considerations preclude re-solicitation of work of a reduced scope to negotiate an adjustment of the bid price (including changes in the bid requirements) with the low responsive and responsible bidder in order to bring the bid within the amount of available funds.

(2) Following award, a written record showing the basis for determining the successful bidder shall be made a part of the procurement file.

(3) All new contract awards made under this Section shall be reported by the Head of the Procurement Department in a monthly written report to the Board of Directors.

§3-202.16 Publicizing Awards.

Written notice of award shall be sent to the successful bidder. Each unsuccessful bidder shall be notified of the award in writing. Notice of award shall be made available to the public through posting on the Authority’s website.

§3-202.17 Multi-Step Sealed Bidding.

(1) Definition. Multi-step sealed bidding is a two phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the Authority, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.

(2) Conditions for Use. The multi-step sealed bidding method may be used when it is not practical to prepare initially a definitive purchase description which will be suitable to permit an award based on price. Multi-step sealed bidding may thus be used when it is considered desirable to:

(a) invite and evaluate technical offers to determine their acceptability to fulfill the purchase description requirements;

(b) conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description;

(c) accomplish (a) and (b) above prior to soliciting priced bids; and
(d) award the contract to the lowest responsive and responsible bidder in accordance with the competitive sealed bidding procedures.

§3-202.18 Pre-Bid Conferences in Multi-Step Sealed Bidding.

Prior to the submission of unpriced technical offers, a pre-bid conference as contemplated by Section 3-202.07 (Pre-Bid Conferences) may be conducted by the Contracting Officer. The Contracting Officer may also hold a conference of all potential bidders in accordance with Section 3-202.07 at any time during the evaluation of the unpriced technical offers.

§3-202.19 Procedure for Phase One of Multi-Step Sealed Bidding.

(1) Form. Multi-step sealed bidding shall be initiated by the issuance of an Invitation for Bids in the form required by Section 3-202.02 (The Invitation for Bids), except as hereinafter provided. In addition to the requirements set forth in Section 3-202.01, the multi-step Invitation for Bids shall state:

(a) that unpriced technical offers are requested;

(b) whether priced bids are to be submitted at the same time as unpriced technical offers; if they are, such priced bids shall be submitted in a separate sealed envelope;

(c) that it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;

(d) the criteria to be used in the evaluation of the unpriced technical offers;

(e) that the Authority, to the extent the Contracting Officer finds necessary, may conduct oral or written discussions of the unpriced technical offers;

(f) that bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are to remain confidential; and

(g) that the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids.

(2) Amendments to the Invitation for Bids for Multi-Step Sealed Bidding. After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers, and they shall be permitted to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the Contracting Officer, a contemplated amendment will significantly change the nature of the procurement, the Invitation for Bids shall be cancelled in accordance with Section 3-301 (Cancellation of Invitations for Bids or Requests for Proposals) and a new Invitation for Bids issued.

(3) Receipt and Handling of Unpriced Technical Offers. Unpriced technical offers shall not be opened publicly but shall be opened in front of two or more [procurement] officials. Such
offers shall not be disclosed to unauthorized persons. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing.

(4) **Evaluation of Unpriced Technical Offers.** The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:

(a) acceptable;

(b) potentially acceptable, that is, reasonably susceptible of being made acceptable; or

(c) unacceptable: the Contracting Officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

The Contracting Officer may initiate Phase Two of the procedure if, in the Contracting Officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without technical discussions. If the Contracting Officer finds that such is not the case, the Contracting Officer shall issue an amendment to the Invitation for Bids or engage in technical discussions as set forth in Section 3-202.19 (5).

(5) **Discussion of Unpriced Technical Offers.** The Contracting Officer may conduct discussions with any bidder who submits an acceptable or potentially acceptable technical offer. During the course of such discussions the Contracting Officer shall not disclose any information derived from one unpriced technical offer to any other bidder. Once discussions are begun, any bidder who has not been notified that its offer has been finally found unacceptable may submit supplemental information amending its technical offer at any time until the closing date established by the Contracting Officer. Such submission may be made at the request of the Contracting Officer or upon the bidder's own initiative.

(6) **Notice of Unacceptable Unpriced Technical Offer.** When the Contracting Officer determines a bidder's unpriced technical offer to be unacceptable, such offeror shall not be afforded an additional opportunity to supplement its technical offer.

§3-202.20 **Mistakes During Multi-Step Sealed Bidding.**

Mistakes may be corrected or bids maybe withdrawn during Phase One at any time. During Phase Two, mistakes may be corrected or withdrawal permitted in accordance with Section 3-202.12 (Mistakes in Bids).

§3-202.21 **Procedure for Phase Two.**

(1) **Initiation.** Upon the completion of Phase One, the Contracting Officer shall either:

(a) open priced bids submitted in Phase One (if priced bids were required to be submitted) from bidders whose unpriced technical offers were found to be acceptable; or
(b) if priced bids have not been submitted, technical discussions have been held, or amendments to the Invitation for Bids have been issued, invite each acceptable bidder to submit a priced bid.

(2) **Conduct.** Phase Two shall be conducted as any other competitive sealed bid procurement except:

(a) as specifically set forth in Section 3-202.17 (Multi-Step Sealed Bidding) through this Section;

(b) no public notice need be given of this invitation to submit priced bids because such notice was previously given;

(c) after award the unpriced technical offer of the successful bidder shall be disclosed as follows. The Contracting Officer shall examine written requests of confidentiality for trade secrets and proprietary data in the technical offer of such bidder to determine the validity of any such requests. If the parties do not agree as to the disclosure of data, the Contracting Officer shall inform the bidder in writing what portions of the unpriced technical offer will be disclosed and that, unless the bidder protests under Chapter 9 (Administrative Remedies and Appeals), the offer will be so disclosed. Such technical offer shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data; and

(d) unpriced technical offers of bidders who are not awarded the contract shall not be open to public inspection unless the Chief Procurement Officer determines in writing that public inspection of such offers is essential to assure confidence in the integrity of the procurement process; provided, however, that the provisions of Subsection 3-202.21 (2) (c) shall apply with respect to the possible disclosure of trade secrets and proprietary data.

§3-203 **Competitive Sealed Proposals.**

§3-203.01 **Use of Competitive Sealed Proposals.**

(1) **When Competitive Sealed Bidding is Not Practicable.** Competitive sealed bidding is not practicable unless the nature of the procurement permits award to a low bidder who agrees by its bid to perform without condition or reservation in accordance with the purchase description, delivery or performance schedule, and all other terms and conditions of the Invitation for Bids. Factors to be considered in determining whether competitive sealed bidding is not practicable include whether:

(a) the contract needs to be other than a fixed-price type;

(b) oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;

(c) offerors may need to be afforded the opportunity to revise their proposals, including price;
(d) award may need to be based upon a comparative evaluation as stated in the Request for Proposals of differing price, quality, and contractual factors in order to determine the most advantageous offering to the Authority. Quality factors include technical and performance capability and the content of the technical proposal; and

(e) the primary consideration in determining award may not be price.

(2) When Competitive Sealed Bidding is Not Advantageous. A determination may be made to use competitive sealed proposals if it is determined that it is not advantageous to the Authority, even though practicable, to use competitive sealed bidding. Factors to be considered in determining whether competitive sealed bidding is not advantageous include:

(a) if prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the Authority; and

(b) whether the factors listed in Subsections 3-203.01 (1) (b) through 3-203.01 (1) (d) are desirable in conducting a procurement rather than necessary; if they are, then such factors may be used to support a determination that competitive sealed bidding is not advantageous.

§3-203.02 Determinations.

The Chief Executive Officer may make determinations by category of supply, service, infrastructure facility, or construction item that it is either not practicable or not advantageous to the Authority to procure specified types of supplies, services, or construction by competitive sealed bidding. Procurements of the specified types of supplies, services, or construction may then be made by competitive sealed proposals based upon such determination. The officer who made such determination may modify or revoke it at any time, and such determination should be reviewed for current applicability from time to time.

§3-203.03 Content of the Request for Proposals.

The Request for Proposals shall be prepared in accordance with Section 3-202.21 (The Invitation for Bids) provided that it shall also include:

(a) a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without such discussions; and

(b) a statement of when and how price should be submitted.

§3-203.04 Proposal Preparation Time.

Proposal preparation time shall be set to provide offerors a reasonable time to prepare their proposals. A minimum of twenty-eight (28) days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined in writing by the Contracting Officer.
§3-203.05 **Form of Proposal.**

The manner in which proposals are to be submitted, including any forms for that purpose, may be designated as a part of the Request for Proposals.

§3-203.06 **Public Notice.**

Public notice shall be given by distributing the Request for Proposals in the same manner provided for distributing an Invitation for Bids under Section 3-202.05 (Public Notice).

§3-203.07 **Use of Bidders Lists.**

Bidder’s lists compiled and maintained in accordance with Section 3-202.06 (Bidders Lists) may serve as a basis for soliciting competitive sealed proposals.

§3-203.08 **Pre-Proposal Conferences.**

Pre-proposal conferences may be conducted in accordance with Section 3-202.07 (Pre-Bid Conferences). Any such conference should be held prior to submission of initial proposals.

§3-203.09 **Amendments to Requests for Proposals.**

Amendments to Requests for Proposals may be made in accordance with Section 3-202.08 (Amendments to Invitations for Bids) prior to submission of proposals. After submission of proposals, amendments may be made in accordance with Subsection 3-202.19 (2) (Procedure for Phase One of Multi-Step Sealed Bidding; Amendments to the Invitation for Bids).

§3-203.10 **Modification or Withdrawal of Proposals.**

Proposals may be modified or withdrawn prior to the established due date in accordance with Section 3-202.09 (Pre-Opening Modification or Withdrawal of Bids). For the purposes of this Section and Section 3-203.11 (Late Proposals, Late Withdrawals, and Late Modifications), the established due date is either the time and date announced for receipt of proposals or receipt of modifications to proposals, if any; or if discussions have begun, it is the time and date by which best and final offers must be submitted, provided that only offerors who submitted proposals by the time announced for receipt of proposals may submit best and final offers.

§3-203.11 **Late Proposals, Late Withdrawals, and Late Modifications.**

Any proposal, withdrawal, or modification received after the established due date at the place designated for receipt of proposals is late. See Section 3-203.10 (Modification or Withdrawal of Proposals) for the definition of "established due date." They may only be considered in accordance with Section 3-202.10 (Late Bids, Late Withdrawals, and Late Modifications).

§3-203.12 **Receipt and Registration of Proposals.**

Proposals shall not be opened publicly but shall be opened in the presence of two or more [procurement] officials. Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of
proposals, a Register of Proposals shall be prepared which shall include for all proposals the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the supply, service, or construction item offered. The Register of Proposals shall be open to public inspection only after award of the contract. Proposals and modifications shall be shown only to Authority personnel having a legitimate interest in them.

§3-203.13 Evaluation of Proposals.

(1) Evaluation Factors in the Request for Proposals. The Request for Proposals shall state all of the evaluation factors (and subfactors), including price, and their relative importance.

(2) Evaluation. The evaluation shall be based on the evaluation factors set forth in the Request for Proposals. Numerical rating systems may be used but are not required. Factors not specified in the Request for Proposals shall not be considered.

(3) Classifying Proposals. For the purpose of conducting discussions under Section 3-203.14 (Proposal Discussions with Individual Offerors), proposals shall be initially classified as:

(a) acceptable;
(b) potentially acceptable, that is, reasonably susceptible of being made acceptable; or
(c) unacceptable.

Offerors whose proposals are unacceptable shall be so notified promptly.

§3-203.14 Proposal Discussions with Individual Offerors.

(1) "Offerors" Defined. For the purposes of Section 3-203.13 (Evaluation of Proposals), the term "offerors" includes only those businesses submitting proposals that are acceptable or potentially acceptable. The term shall not include businesses who submitted unacceptable proposals.

(2) Purposes of Discussions. Discussions are held to:

(a) promote understanding of the Authority’s requirements and the offerors' proposals; and
(b) facilitate arriving at a contract that will be most advantageous to the Authority taking into consideration price and the other evaluation factors set forth in the Request for Proposals.

(3) Conduct of Discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. The Contracting Officer should establish procedures and schedules for conducting discussions. If during discussions there is a need for any substantial clarification of or change in the Request for Proposals, the Request for Proposal shall be amended to incorporate such clarification or change. Auction techniques (revealing one offeror's price to another) and disclosure of any information derived from competing proposals are prohibited. Any substantial oral clarification of a proposal shall be reduced to writing by the offeror.
(4)  **Best and Final Offers.** The Contracting Officer shall establish a common date and time for the submission of best and final offers. Best and final offers shall be submitted only once; provided, however, the Chief Executive Officer may make a written determination that it is in the Authority’s best interest to conduct additional discussions or change the Authority’s requirements and require another submission of best and final offers. Otherwise, no discussion of or changes in the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

§3-203.15  **Mistakes in Proposals.**

(1)  **Modification or Withdrawal of Proposals.** Proposals may be modified or withdrawn as provided in Section 3-203.10 (Modification or Withdrawal of Proposals).

(2)  **Confirmation of Proposal.** When the Contracting Officer knows or has reason to conclude before award that a mistake has been made, such officer should request the offeror to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn during any discussions that are held or if the conditions set forth in Section 3.202.12 are met.

(3)  **Mistakes Discovered After Receipt of Proposals but Before Award.** This Subsection sets forth procedures to be applied in four situations in which mistakes in proposals are discovered after receipt of proposals but before award.

   (a)  **During Discussions; Prior to Best and Final Offers.** Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

   (b)  **Minor Informalities.** Minor informalities, unless otherwise corrected by an offeror as provided in this Section, shall be treated as they are under competitive sealed bidding. See Section 3-202.12 (Mistakes in Bids).

   (c)  **Correction of Mistakes.** If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the intended correct offer considered only if:

      (i)  the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn; or

      (ii) the mistake is not clearly evident on the face of the proposal, but the offeror submits proof of evidentiary value which clearly and convincingly demonstrates both the existence of a mistake and the intended correct offer, and such correction would not be contrary to the fair and equal treatment of other offerors.

   (d)  **Withdrawal of Proposals.** If discussions are not held, or if the best and final offers upon which award will be made have been received, the offeror may be permitted to withdraw the proposal if:
(i) the mistake is clearly evident on the face of the proposal and the intended correct offer is not;

(ii) the offeror submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made but does not demonstrate the intended correct offer; or

(iii) the offeror submits proof of evidentiary value which clearly and convincingly demonstrates the intended correct offer, but to allow correction would be contrary to the fair and equal treatment of the other offerors.

(e) **Mistakes Discovered After Award.** Mistakes shall not be corrected after award of the contract except where a Contracting Officer above the level of the procuring Contracting Officer finds it would be unconscionable not to allow the mistake to be corrected.

§3-203.16 **Award.**

(1) Award shall be made to the responsible offeror whose proposal is determined by the Contracting Officer in writing to be the most advantageous to the Authority taking into consideration the price and evaluation factors set forth in the Request for Proposals.

(2) The procurement file must state the reasons for contractor selection or rejections. All new contract awards made under this Section shall be reported by the Head of the Procurement Department in a monthly written report to the Board of Directors.

§3-203.17 **Publicizing Awards.**

After a contract is entered into, notice of award shall be made available to the public. When the award exceeds $25,000, each unsuccessful offeror shall be notified of the award.

§3-204 **Small Purchases.**

Certain supplies, services and construction may be purchased using simplified, small purchase procedures.

§3-204.01 **Application.**

(1) Any procurement less than $250,000 may be made in accordance with small purchase procedures, provided, however, procurement requirements shall not be artificially divided or reduced to avoid any additional procurement requirements applicable to larger procurements, or to create a small purchase under this Section. Any requirements deemed by the Chief Executive Officer to have been artificially divided shall be reported by the Chief Executive Officer in writing to the Board of Directors at its next scheduled meeting.

(2) All dollar thresholds referenced in this Section shall apply to revenue generating purchases and shall be calculated based on total estimated revenue.
§3-204.02 Authority to Make Small Purchases.

(1) Amount. The Authority may use the procurement methods described in this Section for procurements less than $250,000.

(2) Use of Existing Authority Contracts. Supplies, services, or construction which may be obtained under existing Authority contracts shall be procured under such agreements in accordance with the terms of such contracts. Supplies or construction items available from the Authority’s stocks shall not be procured under this Section. Operational procedures and contract terms may provide for waivers or exceptions to this Subsection and if so, such exceptions shall be documented in writing and kept in the procurement file.

(3) Available from One Business Only. If the supply, service, or construction is available from one business only, the sole source procurement method set forth in Section 3-205 (Sole Source Procurement) shall be used.

§3-204.03 Small Purchases Less Than $10,000 (Micro-Purchases).

(1) Competitive Quotations Not Required. Micro-purchases, which are small purchases less than $10,000, may be accomplished without securing competitive quotations if the prices quoted are considered by the Contracting Officer to be fair and reasonable.

(2) Equitable Distribution of Purchases among Qualified Businesses. The Contracting Officer shall ensure that these purchases are distributed equitably among qualified businesses. When practical, a quotation shall be solicited from other than the previous business prior to placing a repeat order.

(3) Determination of Price Fairness and Reasonableness. The administrative cost of verifying the fairness and reasonableness of the price of a purchase order less than $10,000 may be more than offset by the potential savings from detecting instances of overpricing. Therefore, action to verify that prices submitted are fair and reasonable would generally be undertaken when:

   (a) the Contracting Officer suspects or has information (i.e., comparison to previous prices paid) to indicate that the price may not be fair and reasonable; or

   (b) purchasing an item for which no comparable pricing information is readily available (i.e., an item that is not the same as, or is not similar to, other items that have been recently purchased on a competitive basis).

(4) The Chief Executive Officer shall adopt operational procedures for making small purchases of less than $10,000. Such operational procedures shall provide for obtaining adequate and reasonable competition and for making records to properly account for funds and to facilitate auditing of the purchasing function.

§3-204.04 Competition for Small Purchases of Supplies, Services or Construction Between $10,000 and Less Than $250,000.

(1) Procedure. Insofar as it is practical for small purchases of supplies, services or
construction:

(a) no less than three (3) businesses shall be solicited to submit written or oral quotations for purchases equal to or greater than $10,000 but less than $25,000, and

(b) no less than five (5) businesses shall be solicited to submit written quotations for purchases equal to or greater than $25,000 but less than $250,000.

Award shall be made to the responsible business offering the lowest acceptable quotation, except where indicated otherwise in this Manual (i.e., procurement of architectural or engineering services).

(2) **Records.** All quotations shall be recorded and placed in the procurement file. The names of the businesses submitting quotations and the date and amount of each quotation shall be recorded on a register and maintained in the procurement file as a public record.

§3-205 **Sole Source Procurement.**

A contract may be awarded for a supply, service, or construction without competition when a Contracting Officer, one level above the procuring Contracting Officer, determines in writing that there is only one source for the required supply, service, or construction.

§3-205.01 **Conditions for Use of Sole Source Procurement.**

(1) Sole source procurement is not permissible unless a requirement is available from only a single supplier. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or offeror for that item. The following are examples of circumstances which could necessitate sole source procurement where:

(a) the compatibility of equipment, accessories, or replacement parts is the paramount consideration;

(b) a sole supplier's item is needed for trial use or testing;

(c) a sole supplier's item is to be procured for resale; and

(d) public utility services are to be procured.

(2) The determination as to whether a procurement shall be made as a sole source shall be made by the one level above the Contracting Officer. Such determination and the basis therefor shall be in writing. Such officer may specify the application of such determination and the duration of its effectiveness. In cases of reasonable doubt, competition should be solicited. Any request by a Using Agency that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

§3-205.02 **Negotiation in Sole Source Procurement.**

The Contracting Officer shall conduct negotiations, as appropriate, as to price, delivery, and terms.
§3-205.03  **Record of Sole Source Procurement.**

(1)  A record of sole source procurements shall be maintained that lists the:

(a)  description of the supplies, services or construction purchased;
(b)  date of purchase;
(c)  amount of purchase;
(d)  department;
(e)  each contractor’s name;
(f)  condition that caused the sole source procurement; and
(g)  identification number of the procurement file.

Sole source procurements exceeding the micro-purchase threshold ($10,000) shall be reported by the Chief Executive Officer in a monthly written report to the Board of Directors.

§3-206  **Emergency Procurements.**

(1)  Notwithstanding any other provision of this Manual, the Chief Executive Officer, or his designee, may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions as defined in this Section, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances.

(2)  A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the procurement file.

§3-206.01  **Definition of Emergency Conditions.**

(1)  An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, or such other reason as may be proclaimed by the Chief Executive Officer.

(2)  The existence of such condition creates an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten the:

(a)  functioning of the Authority’s operations;
(b)  preservation or protection of property; or
(c)  health or safety of any person.

§3-206.02  **Scope of Emergency Procurements.**

Emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency.
$3-206.03  **Record of Emergency Procurements.**

A record of emergency procurements shall be maintained that lists the:

(a) description of the supplies, services or construction purchased;

(b) date of purchase;

(c) amount of purchase;

(d) department;

(e) each contractor’s name;

(f) method of procurement;

(g) condition that caused the emergency procurement; and

(h) identification number of the procurement file.

All emergency procurements shall be reported by the Chief Executive Officer in a monthly written report to the Board of Directors.

$3-207  **Special Procurements.**

With the exception of architectural and engineering services, a contract or purchase order cannot be executed for the services listed below without prior approval of the Board of Directors.

$3-207.01  **Auditor Selection Procedures.**

(1) *Audit Services for Annual Financial Audit.* The Authority shall use auditor selection procedures when selecting an auditor to conduct the annual financial audit required in Section 218.39, Florida Statutes.

(2) The Authority’s Audit Committee shall:

(a) Establish factors to use for the evaluation of audit services to be provided by a certified public accounting firm duly licensed under Chapter 473, Florida Statutes and qualified to conduct audits in accordance with government auditing standards as adopted by the Florida Board of Accountancy. Such factors shall include, but are not limited to:

   (i) ability of personnel;

   (ii) experience;

   (iii) ability to furnish the required services; and

   (iv) such other factors as may be determined by the committee to be applicable to its particular requirements;
(b) Publicly announce Requests for Proposals. Public announcements must include, at a minimum, a brief description of the audit and indicate how interested firms can apply for consideration;

(c) Provide interested firms with a copy of the Request for Proposals. The Request for Proposals shall include information on how proposals are to be evaluated and such other information the committee determines is necessary for the firm to prepare a proposal;

(d) Evaluate proposals provided by qualified firms. If compensation is one of the factors established pursuant to paragraph (a), it shall not be the sole or predominant factor used to evaluate proposals; and

(e) Rank and recommend in order of preference no fewer than three (3) firms deemed to be the most highly qualified to perform the required services after considering the factors established pursuant to paragraph (a) above. If fewer than three (3) firms respond to the Request for Proposals, the committee shall recommend such firms as it deems to be the most highly qualified.

(3) The Board of Directors shall inquire of qualified firms as to the basis of compensation, select one of the firms recommended by the Audit Committee, and negotiate a contract, using one of the following methods:

(a) If compensation is not one of the factors established and not used to evaluate firms, the Board of Directors shall negotiate a contract with the firm ranked first. If the Board of Directors is unable to negotiate a satisfactory contract with that firm, negotiations with that firm shall be formally terminated, and the Board of Directors shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, negotiations shall then be terminated with that firm and undertaken with the third-ranked firm. Negotiations with the other ranked firms shall be undertaken in the same manner. The Board of Directors, in negotiating with firms, may reopen formal negotiations with any one of the three top-ranked firms, but it may not negotiate with more than one firm at a time.

(b) If compensation is one of the factors established and used in the evaluation of proposals, the Board of Directors shall select the highest-ranked qualified firm or must document in its public records the reason for not selecting the highest-ranked qualified firm.
(c) The Board of Directors may select a firm recommended by the Audit Committee and negotiate a contract with one of the recommended firms using an appropriate alternative negotiation method for which compensation is not the sole or predominant factor used to select the firm.

(d) In negotiations with firms under this section, the Board of Directors may allow a designee to conduct negotiations on its behalf.

(4) The method used by the Board of Directors to select a firm recommended by the Audit Committee and negotiate a contract with such firm must ensure that the agreed-upon compensation is reasonable to satisfy the requirements of Section 218.39, Florida Statutes and the needs of the Board of Directors.

(5) If the Board of Directors is unable to negotiate a satisfactory contract with any of the recommended firms, the committee shall recommend additional firms, and negotiations shall continue in accordance with this section until an agreement is reached.

(6) Every procurement of audit services shall be evidenced by a written contract embodying all provisions and conditions of the procurement of such services. For purposes of this section, an engagement letter signed and executed by both parties shall constitute a written contract. The written contract shall, at a minimum, include the following:

(a) A provision specifying the services to be provided and fees or other compensation for such services;

(b) A provision requiring that invoices for fees or other compensation be submitted in sufficient detail to demonstrate compliance with the terms of the contract; and

(c) A provision specifying the contract period, including renewals, and conditions under which the contract may be terminated or renewed.

(7) Written contracts may be renewed. Such renewals may be done without the use of the auditor selection procedures provided in this section. Renewal of a contract shall be in writing.

(8) Internal Audit Services (Not Annual Financial Audit). The Authority may use the selection procedures specified in Section 3-203 (Competitive Sealed Proposals) or Section 3-207.01 (Auditor Selection Procedures) for the procurement of internal audit services not associated with the Authority’s annual financial audit.

§3-207.02 Selection of Legislative Consultants and Legal Services.

(1) General. The Authority may use a competitive solicitation process or informal competitive process when obtaining legislative consulting and legal services. In preparation for this, the Board of Directors shall appoint an Ad Hoc Committee to oversee the selection process. If a competitive solicitation process is used, the Ad Hoc Committee shall follow the process designated in Section 3-207.02.1 below. If an informal competitive process is used, the Ad Hoc Committee shall follow the process designated in paragraph Section 3-207.02.2, below.
(2)  Use of Federal Funds. Federal funds may not be used to purchase legislative consulting services. Use of federal funds to purchase legal services may only be used where not prohibited by law or regulations.

§3-207.02.1  Use of Competitive Solicitation Process.

(1)  If a competitive solicitation process is used, the Ad Hoc Committee shall:

   (a)  Establish factors to use for the evaluation of services. Such factors shall include:
        but are not limited to:

      (i)  ability of personnel;

      (ii) experience;

      (iii) ability to furnish the required services; and

      (iv) such other factors as may be determined by the committee to be applicable to its particular requirements;

   (b)  Publicly announce Requests for Proposals. Public announcements must include, at a minimum, a brief description of the Authority’s requirements and indicate how interested firms can apply for consideration;

   (c)  Provide interested firms with a copy of the Request for Proposals. The Request for Proposals shall include information on how proposals are to be evaluated and such other information the committee determines is necessary for the firm to prepare a proposal;

   (d)  Evaluate proposals provided by qualified firms. If compensation is one of the factors established pursuant to paragraph (a), it shall not be the sole or predominant factor used to evaluate proposals; and

   (e)  Rank and recommend in order of preference no fewer than three (3) firms deemed to be the most highly qualified to perform the required services after considering the factors established pursuant to paragraph (a) above. If fewer than three (3) firms respond to the Request for Proposals, the committee shall recommend such firms as it deems to be the most highly qualified.

(2)  The Board of Directors shall inquire of qualified firms as to the basis of compensation, select one of the firms recommended by the Ad Hoc Committee, and negotiate a contract, using one of the following methods:

   (a)  If compensation is not one of the factors established and not used to evaluate firms, the Board of Directors shall negotiate a contract with the firm ranked first. If the Board of Directors is unable to negotiate a satisfactory contract with that firm, negotiations with that firm shall be formally terminated, and the Board of Directors shall then undertake negotiations with the second-ranked firm. Failing accord with the second-
ranked firm, negotiations shall then be terminated with that firm and undertaken with the third-ranked firm. Negotiations with the other ranked firms shall be undertaken in the same manner. The Board of Directors, in negotiating with firms, may reopen formal negotiations with any one of the three top-ranked firms, but it may not negotiate with more than one firm at a time.

(b) If compensation is one of the factors established and used in the evaluation of proposals, the Board of Directors shall select the highest-ranked qualified firm or must document in its public records the reason for not selecting the highest-ranked qualified firm.

(c) The Board of Directors may select a firm recommended by the Ad Hoc Committee and negotiate a contract with one of the recommended firms using an appropriate alternative negotiation method for which compensation is not the sole or predominant factor used to select the firm.

(d) In negotiations with firms under this section, the Board of Directors may allow a designee to conduct negotiations on its behalf.

(3) The method used by the Board of Directors to select a firm recommended by the Ad Hoc Committee and negotiate a contract with such firm must ensure that the agreed-upon compensation is reasonable to satisfy the needs of the Board of Directors.

(4) If the Board of Directors is unable to negotiate a satisfactory contract with any of the recommended firms, the committee shall recommend additional firms, and negotiations shall continue in accordance with this section until an agreement is reached.

(5) Every procurement of these services shall be evidenced by a written contract embodying all provisions and conditions of the procurement of such services. For purposes of this Section, an engagement letter signed and executed by both parties shall constitute a written contract. The written contract shall, at a minimum, include the following:

(a) A provision specifying the services to be provided and fees or other compensation for such services;

(b) A provision requiring that invoices for fees or other compensation be submitted in sufficient detail to demonstrate compliance with the terms of the contract; and

(c) A provision specifying the contract period, including renewals, and conditions under which the contract may be terminated or renewed.

(6) Written contracts may be renewed. Such renewals may be done without the use of these selection procedures provided in this section. Renewal of a contract shall be in writing.

§3-207.02.2 Use of Informal Solicitation Process.

(1) If an informal solicitation process is used, the Ad Hoc Committee shall:
(a) Establish factors to use for the evaluation of services. Such factors shall include, but are not limited to:

(i) ability of personnel;

(ii) experience;

(iii) ability to furnish the required services; and

(iv) such other factors as may be determined by the committee to be applicable to its particular requirements;

(b) Identify at least three (3) firms known to be qualified to provide the required services;

(c) Obtain informal proposals from each of the three (3) qualified firms;

(d) Evaluate the informal proposals. If compensation is one of the factors established pursuant to paragraph (a), it shall not be the sole or predominant factor used to evaluate proposals; and

(e) Rank and recommend in order of preference no fewer than three (3) firms deemed to be the most highly qualified to perform the required services after considering the factors established pursuant to paragraph (a) above. If fewer than three (3) firms respond, the committee shall recommend such firms as it deems to be the most highly qualified.

(2) The Board of Directors shall inquire of qualified firms as to the basis of compensation, select one of the firms recommended by the Ad Hoc Committee, and negotiate a contract, using one of the following methods:

(a) If compensation is not one of the factors established and not used to evaluate firms, the Board of Directors shall negotiate a contract with the firm ranked first. If the Board of Directors is unable to negotiate a satisfactory contract with that firm, negotiations with that firm shall be formally terminated, and the Board of Directors shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, negotiations shall then be terminated with that firm and undertaken with the third-ranked firm. Negotiations with the other ranked firms shall be undertaken in the same manner. The Board of Directors, in negotiating with firms, may reopen formal negotiations with any one of the three top-ranked firms, but it may not negotiate with more than one firm at a time.

(b) If compensation is one of the factors established and used in the evaluation of informal proposals, the Board of Directors shall select the highest-ranked qualified firm or must document in its public records the reason for not selecting the highest-ranked qualified firm.

(c) The Board of Directors may select a firm recommended by the Ad Hoc Committee and negotiate a contract with one of the recommended firms using an
appropriate alternative negotiation method for which compensation is not the sole or predominant factor used to select the firm.

(d) In negotiations with firms under this section, the Board of Directors may allow a designee to conduct negotiations on its behalf.

(3) The method used by the Board of Directors to select a firm recommended by the Ad Hoc Committee and negotiate a contract with such firm must ensure that the agreed-upon compensation is reasonable to satisfy the needs of the Board of Directors.

(4) If the Board of Directors is unable to negotiate a satisfactory contract with any of the recommended firms, the committee shall recommend additional firms, and negotiations shall continue in accordance with this section until an agreement is reached.

(5) Every procurement of these services shall be evidenced by a written contract embodying all provisions and conditions of the procurement of such services. For purposes of this Section, an engagement letter signed and executed by both parties shall constitute a written contract. The written contract shall, at a minimum, include the following:

(a) A provision specifying the services to be provided and fees or other compensation for such services;

(b) A provision requiring that invoices for fees or other compensation be submitted in sufficient detail to demonstrate compliance with the terms of the contract; and

(c) A provision specifying the contract period, including renewals, and conditions under which the contract may be terminated or renewed.

(6) Written contracts may be renewed. Such renewals may be done without the use of these selection procedures provided in this section. Renewal of a contract shall be in writing.

Section 3-300 – Cancellation of Invitations for Bids or Requests for Proposals

§3-301 Cancellation of Invitations for Bids or Requests for Proposals.

(1) An Invitation for Bids, a Request for Proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the Authority in accordance with this Section. The reasons therefor shall be made part of the procurement file.

(2) Solicitations should be issued only when there is a valid procurement need, unless the solicitation states that it is for informational purposes only. Preparing and distributing a solicitation requires the expenditure of the Authority's time and funds. Businesses likewise incur expense in examining and responding to solicitations. Therefore, although issuance of a solicitation does not compel award of a contract, a solicitation is to be cancelled only when there are cogent and compelling reasons to believe that the cancellation of the solicitation is in the Authority's best interest.
§3-301.01 Cancellation of Solicitation-Notice.

Each solicitation issued by the Authority shall state that the solicitation may be cancelled as provided in Section 3-301 (Cancellation of Invitations for Bids or Requests for Proposals).

§3-301.02 Cancellation of Solicitation; Rejection of All Bids or Proposals.

(1) Prior to Opening.

(a) As used in this Section, "opening" means the date set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals.

(b) Prior to opening, a solicitation may be cancelled in whole or in part when the Contracting Officer determines in writing that such action is in the Authority’s best interest.

(c) When a solicitation is cancelled prior to opening, notice of cancellation shall be sent to all businesses solicited.

(d) The notice of cancellation shall:

(i) identify the solicitation;

(ii) briefly explain the reason for cancellation; and

(iii) where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar supplies, services, or construction.

(2) After Opening.

(a) After opening but prior to award, all bids or proposals may be rejected in whole or in part when a Contracting Officer above the level of the procuring Contracting Officer determines in writing that such action is in the Authority’s best interest.

(b) A notice of rejection should be sent to all businesses that submitted bids or proposals.

(3) Documentation. The reasons for cancellation or rejection shall be reduced in writing by the Contracting Officer and be made a part of the procurement file and shall be available for public inspection.

§3-301.03 Rejection of Individual Bids or Proposals.

(1) General. This Section applies to rejections of individual bids or proposals in whole or in part.
(2) **Notice in Solicitation.** Each solicitation issued by the Authority shall provide that any bid or proposal may be rejected in whole or in part when in the best interest of the Authority as provided in Section 3-301 (Cancellation of Invitations for Bids or Requests for Proposals).

(3) **Reasons for Rejection.**

(a) **Bids.** As used in this Subsection, "bid" means any bid submitted in competitive sealed bidding or in the second phase of multi-step sealed bidding and includes submissions under Section 3-204 (Small Purchases) if no changes in offers are allowed after submission. Reasons for rejecting a bid include but are not limited to:

(i) the business that submitted the bid is non-responsible as determined under Section 3-401.05 (Written Determination of Non-responsibility Required);

(ii) the bid is not responsive, that is, it does not conform in all material respects to the Invitation for Bids; see Section 3-202.13 (Bid Evaluation and Award); or

(iii) the supply, service, or construction item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the Invitation for Bids. (See Section 3-202.13 (Bid Evaluation and Award)).

(b) **Proposals.** As used in this Subsection, "proposal" means any offer submitted in response to any solicitation, including an offer under Section 3-204 (Small Purchases), except a bid as defined in Section 3-301.03. 3(a) of this Section. Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction, and the Authority’s stated requirements may be revised or clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting proposals include but are not limited to:

(i) the business that submitted the proposal is non-responsible as determined under Section 3-401 (Responsibility of Bidders and Offerors);

(ii) the proposal ultimately (that is, after any opportunity has passed for altering or clarifying the proposal) fails to meet the announced -requirements of the Authority in some material respect; or

(iii) the proposed price is clearly unreasonable.

(4) **Notice of Rejection.** Upon request, unsuccessful bidders or offerors shall be advised of the reasons therefor.

§3-301.04 **"All or None" Bids or Proposals.**

Only when provided by the solicitation may a bid or proposal limit acceptance to the entire bid or proposal offering. Otherwise, such bids or proposals shall be deemed to be nonresponsive. If the bid or proposal is properly so limited, the Authority shall not reject part of such bid or proposal and award on the remainder.
§3-301.05 **Disposition of Bids or Proposals.**

When bids or proposals are rejected, or a solicitation cancelled after bids or proposals are received, the bids or proposals which have been opened shall be retained in the procurement file, or if unopened, returned to the bidders or offerors upon request, or otherwise disposed of.

**Section 3-400 - Qualification and Duties**

§3-401 **Responsibility of Bidders and Offerors.**

(1) **Determination of Non-responsibility.** A written determination of non-responsibility of a bidder or offeror shall be made in accordance with this Section. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror.

(2) **Right of Nondisclosure.** Confidential information furnished by a bidder or offeror pursuant to this Section shall only be disclosed as made permissible by law or regulation.

§3-401.01 **Application.**

A determination of responsibility or non-responsibility shall be governed by this Section.

§3-401.02 **Standards of Responsibility.**

(1) **Standards.** Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor has:

   (a) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;

   (b) a satisfactory record of performance;

   (c) a satisfactory record of integrity;

   (d) qualified legally to contract with the Authority; and

   (e) supplied all necessary information in connection with the inquiry concerning responsibility.

(2) **Information Pertaining to Responsibility.** The prospective contractor shall supply information requested by the Contracting Officer concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the Contracting Officer shall base the determination of responsibility upon any available information or may find the prospective contractor non responsible if such failure is unreasonable.
(3) Pre-award Surveys. When the information available to the Contracting Officer is insufficient to make a determination regarding responsibility, a pre-award survey of the prospective contractor's business and facilities may be conducted. A pre-award survey may cover one or more areas, including technical ability, production capacity, facilities, equipment, quality control, accounting system, financial capability, and record of performance on other contracts.

§3-401.03 Ability to Meet Standards.

The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

(a) evidence that such contractor possesses such necessary items;

(b) acceptable plans to subcontract for such necessary items; or

(c) a documented commitment from or explicit arrangement with, a satisfactory source to provide the necessary items.

§3-401.04 Duty Concerning Responsibility.

Before awarding a contract, the Contracting Officer must be satisfied that the prospective contractor is responsible. If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the Contracting Officer. The Contracting Officer shall promptly cause to be sent a letter to the non-responsible bidder or offeror indicating that the Contracting Officer has determined it to be non-responsible and stating the reason(s) for the determination. The final determination shall be made part of the procurement file. Any determination by a Contracting Officer regarding responsibility shall be sustained under the Authority’s protest procedures.

§3-401.05 Written Determination of Non-responsibility Required.

If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the Contracting Officer. A copy of the determination shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the procurement file.

§3-402 Prequalification of Suppliers.

Prospective suppliers may be prequalified for particular types of supplies, services, and construction. The method of submitting prequalification information and the information required in order to be prequalified shall be determined by the Chief Executive Officer or his designee.
§3-402.01 Prequalification.

(1) General. Prospective contractors may be prequalified for bidder lists, but distribution of the solicitation shall not be limited to prequalified contractors nor may a prospective contractor be denied award of a contract simply because such contractor was not prequalified. The fact that a prospective contractor has been prequalified does not necessarily represent a finding of responsibility.

(2) Qualified Products Lists. This Section is not applicable to qualified products lists which are treated in Chapter 4 (Specifications) of this Manual.

§3-403 Independent Cost Estimates and Substantiation of Offered Prices.

§3-403.01 Scope of Section.

(1) This Section establishes the criteria for establishing independent cost estimates and sets forth the pricing policies which are applicable to contracts of any type and any price adjustments thereunder when cost or pricing data are required to be submitted. The provisions of this Section requiring submission of cost or pricing data do not apply to a contract let by competitive sealed bidding (including multi-step bidding) or small purchases. However, cost or pricing data may be required under a contract let by competitive sealed bidding when price adjustments are subsequently made in such a contract.

(2) Independent Cost Estimates.

(a) An Independent Cost Estimate (ICE) is a cost estimate developed by the requisitioner, based on the requirements of the specifications or statement of work and their historical experience, without the influence of prospective offerors in developing the ICE. It is a “should cost” assessment, which is used to support the Contracting Officer’s price or cost reasonableness determination.

(b) Requisitioners are required to provide an ICE prior to the initiation of procurement actions, whether a new procurement or contract modification, and in sufficient detail that the Contracting Officer can reasonably determine the reliability of it and use it as the basis for determining (i) the source selection method and the (ii) reasonableness of quotes, bids or proposals.

(c) ICEs shall be independently developed and without the influence of prospective offerors.

(d) The ICE can range from a simple budgetary estimate to a complex estimate based on inspection of the product itself and review of items like drawings, specifications and prior procurement data, or an assessment of labor, overhead, subcontractor costs and fee or profit, etc. It may be prepared from published price lists, from past competitive procurements updated with inflation factors, by contacting other agencies that obtained competitive bids or proposals for the same or similar supplies or services, or other common methods, including the use of estimates prepared by engineering or design firms for construction projects.
(3) **Substantiation of Offered Prices.** The Contracting Officer may request factual information reasonably available to the bidder or offeror to substantiate that the price or cost offered, or some portion of it, is reasonable, if the price is not:

(a) based on adequate price competition;

(b) based on established catalogue or market prices; or

(c) set by law or regulation; and

(d) the price or cost exceeds the independent cost estimate.

§3-403.02 **Requirement for Cost or Pricing Data.**

(1) Cost or pricing data may be required to be submitted in support of a proposal when:

(a) any contract for property, services (except professional services), or construction expected to exceed $500,000 is to be awarded by competitive sealed proposals or by sole source procurement; or

(b) adjusting the price of any contract for property, services (except professional services), or construction (including a contract awarded by competitive sealed bidding containing a Cost or Pricing Data Clause, whether or not cost or pricing data were required in connection with the initial pricing of the contract) if the adjustment involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $100,000. For example, the requirement applies to a $30,000 net modification resulting from a reduction of $70,000 and an increase of $40,000 when the reduction and increase are related. However, this requirement shall not apply when unrelated and separately priced adjustments for which cost or pricing data would not be required if considered separately are consolidated for administrative convenience.

(2) Cost and pricing data shall not be required:

(a) when the contract or adjusted price is based on:

(i) adequate price competition;

(ii) established catalogue prices or market prices; or

(iii) prices set by law or regulation; or

(b) when the Chief Executive Officer determines in writing to waive the applicable requirement for submission of cost or pricing data in a particular pricing action and the reasons for such waiver are stated in the determination. A copy of such determination shall be kept in the contract file and made available to the public upon request.
(3) If, after cost or pricing data were initially requested and received, it is determined that adequate price competition does exist, the data need not be certified.

(4) Any contractor required to submit and certify cost or pricing data shall be required to submit accurate, current, and complete cost or pricing data from prospective or actual subcontractors in support of each subcontract cost estimate included in the contractor's submission whenever the subcontract cost estimate is either (i) more than $100,000 or (ii) more than 10% of the contractor’s price for the contract or contract modification, as the case may be. The exceptions stated in Subsection (2) above, also shall be applicable to this requirement for subcontractor cost or pricing data. Contractors agree to include provisions in all subcontracts by which the contractor can require subcontractors to submit cost or pricing data in accordance with this Subsection in support of subcontract modifications. While contractors shall be required to submit a subcontractor's certified cost or pricing data only from the prospective subcontractor most likely to be awarded the subcontract, other subcontractor quotations and information may be cost or pricing data of the contractor that is required to be submitted. Prospective subcontractor cost or pricing data shall be certified to be current, accurate, and complete as of the same date specified in contractors’ certificates.

§3-403.03 Meaning of Terms.

(1) Adequate Price Competition. Price competition exists if competitive sealed proposals are solicited and at least two responsible offerors independently compete for a contract to be awarded to the responsible offeror submitting the lowest evaluated price by submitting priced offers (or best and final offers) meeting the requirements of the solicitation. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the Contracting Officer determines in writing that such competition is not adequate.

(2) Established Catalog or Market Prices.

(a) "Established catalogue price" means the price included in a catalogue, price list, schedule, or other form that:

(i) is regularly maintained by a manufacturer or contractor;

(ii) is either published or otherwise available for inspection by customers; and

(iii) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(b) "Established market price" means a current price, established in the usual and ordinary course of trade between buyers and sellers, which can be substantiated from sources which are independent of the manufacturer or supplier and may be an indication of the reasonableness of price.
(3) **Prices Set by Law or Regulation.** The price of a supply or service is set by law or regulation if some governmental body establishes the price that the offeror or contractor may charge the Authority and other customers.

§3-403.04 **Submission of Cost or Pricing Data and Certification.**

(1) When cost or pricing data are required, they shall be submitted to the Contracting Officer prior to beginning negotiations at any reasonable time and in any reasonable manner prescribed by the Contracting Officer. When the Contracting Officer requires the offeror or contractor to submit cost or pricing data in support of any proposal, such data shall either be actually submitted or specifically identified in writing.

(2) The offeror or contractor is required to keep such submission current until the negotiations are concluded.

(3) The offeror or contractor shall certify, as soon as practicable after agreement is reached on price, that the cost or pricing data submitted are accurate, complete, and current as of a mutually determined date prior to reaching agreement.

§3-403.05 **Certificate of Current Cost or Pricing Data.**

(1) When cost or pricing data must be certified, a certificate shall be included in the contract file. The offeror or contractor shall be required to submit the certificate as soon as practicable after agreement is reached on the contract price or adjustment.

(2) Although the certificate pertains to "cost or pricing data," it is not to be construed as a representation as to the accuracy of the offeror's or contractor's judgment on the estimated portion of future costs or projections. It does, however, constitute a representation as to the accuracy of the data upon which the offeror's or contractor's judgment is based. A Certificate of Current Cost or Pricing Data shall not substitute for examination and analysis of the offeror's or contractor's proposal.

(3) Whenever it is anticipated that a Certificate of Current Cost or Pricing Data may be required, notice of this requirement shall be included in the solicitation. If such a certificate is required, the contract shall include a clause giving the Authority a contract right to a reduction in the price.

(4) The exercise of an option at the price established in the initial negotiation in which certified cost or pricing were used does not require recertification or further submission of data.

§3-403.06 **Defective Cost or Pricing Data.**

(1) If certified cost or pricing data subsequently are found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the Authority is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. Judgmental errors made in good faith concerning the estimated portions of future costs or projections do not constitute defective data. It is presumed that overstated cost or pricing data increased the
contract price in the amount of the overstatement plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data were not used or relied upon; the price should be reduced in such amount. In establishing that the defective data caused an increase in the contract price, the Contracting Officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

(2) In determining the amount of a downward adjustment, the contractor shall be entitled to an offsetting adjustment for any understated cost or pricing data submitted in support of price negotiations for the same pricing action up to the amount of the Authority’s claim for overstated cost or pricing data arising out of the same pricing action.

(3) If the contractor and the Contracting Officer cannot agree as to the existence of defective cost or pricing data or the amount of adjustment due to defective cost or pricing data, the Contracting Officer shall set an amount in accordance with this Section, and the contractor may appeal this decision as a contract controversy under the disputes clause of the contract.

§3-403.07 Price Analysis Techniques.

Price analysis is used to determine if a price is reasonable and acceptable. It involves an evaluation of the prices for the same or similar items or services. Examples of price analysis criteria include, but are not limited to:

(a) price submission of prospective bidders or offerors in the current procurement;
(b) prior price quotations and contract prices charged by the bidder, offeror, or contractor for the same or similar items;
(c) prices published in catalogues or price lists;
(d) prices available on the open market; and
(e) in-house estimates of cost.

In making such analysis, consideration must be given to any differing terms and conditions.

§3-403.08 Cost Analysis Techniques.

Cost analysis includes the appropriate verification of cost or pricing data and the use of this data to evaluate:

(a) specific elements of costs;
(b) the necessity for certain costs;
(c) the reasonableness of amounts estimated for the necessary costs;
(d) the reasonableness of allowances for contingencies;
(e) the basis used for allocation of indirect costs;  

(f) the appropriateness of allocations of particular indirect costs to the proposed contract; and  

(g) the reasonableness of the total cost or price.

§3-403.09 Evaluations of Cost or Pricing Data.

Evaluations of cost or pricing data should include comparisons of costs and prices of an offeror's cost estimates with those of other offerors and any independent price and cost estimates by the Authority. They also shall include consideration of whether such costs are reasonable and allocable under the pertinent provisions of Chapter 7 (Cost Principles).

§3-403.10 Submission of Substantiating Data.

(1) Time and Manner. When factual information is requested by the Contracting Officer to substantiate that the price or cost offered, or some portion of such price or cost, is reasonable, the offeror shall submit such data to the Contracting Officer prior to beginning price negotiations at any reasonable time and in any reasonable manner prescribed by the Contracting Officer. Such information shall either be actually submitted or specifically identified in writing.

(2) Refusal to Submit Data. A refusal by the offeror to supply the requested information may be grounds to disqualify the offeror or to defer award pending further review and analysis. In the event the Contracting Officer decides to enter into the contract without first receiving the requested information, the Contracting Officer shall make a written determination setting forth the reasons for the award, which shall be made a part of the procurement file.

Section 3-500 – Types of Contract

§3-501 Types of Contracts.

Subject to the limitations of this Section, any type of contract which will promote the best interests of the Authority may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing by the Chief Executive Officer that such contract is likely to be less costly to the Authority than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

§3-501.01 Permitted Contract Types.

Except for a cost-plus-a-percentage-of-cost contract which is prohibited by Section 3-501 (Types of Contracts), the use of any type of contract is permissible. Permitted contract types include, but are not limited to, the following:

(a) Fixed Price Contracts (with contract specified adjustments);  

(b) Firm Fixed-Price Contracts;
(c) Fixed-price Contracts with Price Adjustment;
(d) Cost-Reimbursement Contracts;
(e) Allowable Cost Contracts;
(f) Cost-Plus-Fixed Fee Contracts;
(g) Cost Incentive Contracts;
(h) Fixed-Price Cost Incentive Contracts;
(i) Cost-Reimbursement Contracts with Cost Incentive Fee;
(j) Performance Incentive Contracts;
(k) Time and Materials Contracts;
(l) Labor Hour Contracts;
(m) Definite Quantity Contracts;
(n) Indefinite Quantity Contracts;
(o) Requirements Contracts;
(p) Leases; and
(q) Lease with Purchase Option.

§3-502 Policy Regarding Selection of Contract Types.

(1) The selection of an appropriate contract type depends on factors such as the nature of the supplies, services, or construction to be procured, the uncertainties which may be involved in contract performance, and the extent to which the Authority or the contractor is to assume the risk of the cost of performance of the contract. Contract types differ in the degree of responsibility assumed by the contractor. The objective when selecting a contract type is to obtain the best value in needed property, services, or construction in the time required and at the lowest cost or price to the Authority. In order to achieve this objective, the Contracting Officer, before choosing a contract type, should review those elements of the procurement which directly affect the cost, time, risk, and profit incentives bearing on the performance. Among the factors to be considered in selecting any type of contract are:

(a) the type and complexity of the property, service, or construction item being procured;

(b) the difficulty of estimating performance costs, such as the inability of the Authority to develop definitive specifications, to identify the risks to the contractor inherent in the nature of the work to be performed, or otherwise to establish clearly the requirements of the contract;
(c) the administrative costs to both parties;
(d) the degree to which the Authority must provide technical coordination during the performance of the contract;
(e) the effect of the choice of the type of contract on the amount of competition to be expected;
(f) the stability of material or commodity market prices or wage levels;
(g) the urgency of the requirement; and
(h) the length of contract performance.

(2) The provisions of this Section describe and define the contract types. Any other type of contract, except cost-plus-a- percentage-of-cost, may be used, provided a Contracting Officer one level above the procuring Contracting Officer determines in writing that such use is in the Authority’s best interest.

§3-503  Types of Fixed-Price Contracts.

(1) A fixed-price contract places responsibility on the contractor for the delivery of the product or the complete performance of the services or construction in accordance with the contract terms at a price that may be firm or may be subject to contractually specified adjustments. The fixed-price contract is appropriate and preferred for use when the extent and type of work necessary to meet Authority requirements reasonably can be specified and the cost reasonably can be estimated, as is generally the case for construction or standard commercial products. A fixed-price type of contract is the only type of contract that can be used in competitive sealed bidding.

(2) A firm fixed-price contract provides a price that is not subject to adjustment because of variations in the contractor’s cost of performing the work specified in the contract. It should be used whenever prices which are fair and reasonable to the Authority can be established at the outset. Bases upon which firm fixed prices may be established include:

(a) adequate price competition for the contract;
(b) comparison of prices in similar prior procurements in which prices were fair and reasonable;
(c) establishment of realistic costs of performance by utilizing available cost or pricing data and identifying uncertainties in contract performance; or
(d) use of other adequate means to establish a firm price.

(3) A fixed-price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in contract price can be made shall be specified in the solicitation and the resulting
contract. Adjustment allowed may be upward or downward only or both upward and downward. Examples of conditions under which adjustments may be provided in fixed-price contracts are:

(a) changes in the contractor's labor agreement rates as applied to industry or area wide;

(b) changes due to rapid and substantial price fluctuation, which can be related to an accepted index (such as contracts for gasoline and oil); and

(c) in requirements contracts:
   
   (i) when a general price change applicable to all customers occurs; or
   
   (ii) when a general price change alters the base price (such as a change in a manufacturer's published price list or posted price to which a fixed discount is applied pursuant to the contract to determine the contract price).

If the contract permits unilateral action by the contractor to bring about the condition under which a price increase may occur, the contract shall reserve to the Authority the right to reject the price increase and terminate without cost the future performance of the contract. The contract also shall require that notice of any such price increase shall be given within such time prior to its effective date as specified in the contract. These restrictions shall not apply to fixed-price cost incentive contracts and fixed-price performance incentive contracts.

§3-504 Types of Cost-Reimbursement Contracts.

(1) The cost-reimbursement type contract provides for payment to the contractor of allowable costs incurred in the performance of the contract as determined in accordance with Chapter 7 (Cost Principles) of these regulations and as provided in the contract. This type of contract establishes at the outset an estimated cost for the performance of the contract and a dollar ceiling which the contractor may not exceed (except at its own expense) without prior approval or subsequent ratification by the Contracting Officer and, in addition, may provide for payment of a fee. The contractor agrees to perform as specified in the contract until the contract is completed or until the costs reach the specified ceiling, whichever first occurs. This type of contract is appropriate when the uncertainties involved in contract performance are of such magnitude that the cost of contract performance cannot be estimated with sufficient certainty to realize economy by use of any type of fixed-price contract. In addition, a cost-reimbursement contract necessitates appropriate monitoring by Authority personnel during performance so as to give reasonable assurance that the objectives of the contract are being met. It is particularly suitable for research, development, and study type contracts.

(2) A cost-reimbursement type contract may be used only when a Contracting Officer one level above the procuring Contracting Officer determines in writing that:

(a) such a contract is likely to be less costly to the Authority than any other type or that it is impracticable to obtain otherwise the property, services, or construction;

(b) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

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(c) The proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

(3) A cost contract provides that the contractor will be reimbursed for allowable costs incurred in performing the contract but will not receive a fee.

(4) A cost-plus-fixed-fee contract is a cost-reimbursement type contract which provides for payment to the contractor of an agreed fixed fee in addition to reimbursement of allowable incurred costs. The fee is established at the time of contract award and does not vary whether or not the actual cost of contract performance is greater or less than the initial estimated cost established for such work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee is subject to adjustment only if the contract is modified to provide for an increase or decrease in the scope of work specified in the contract. The cost-plus-fixed-fee contract can be either a Completion Form or Term Form.

(a) The Completion Form is one which describes the scope of work to be done as a clearly defined task or job with a definite goal or target expressed and with a specific end-product required. This form of contract normally requires the contractor to complete and deliver the specified end-product (in certain instances, final report of research accomplishing the goal or target) as a condition for payment of the entire fixed-fee established for the work and within the estimated cost if possible; however, in the event the work cannot be completed within the estimated cost, the Authority can elect to require more work and effort from the contractor without increase in fee, provided it increases the estimated cost.

(b) The Term Form is one which describes the scope of work to be done in general terms and which obligates the contractor to devote a specified level of effort for a stated period of time. Under this form, the fixed fee is payable at the termination of the agreed period of time upon certification that the contractor has exerted the level of effort specified in the contract in performing the work called for, and that such performance is considered satisfactory by the Authority.

(c) The Completion Form of contract, because of differences in obligation assumed by the contractor, is to be preferred over the Term Form whenever the work itself or specific milestones can be defined with sufficient precision to permit the development of estimates within which prospective contractors reasonably can be expected to complete the work. A milestone is a definable point in a program when certain objectives can be said to have been accomplished.

(d) In no event should the Term Form of contract be used unless the contractor is obligated by the contract to provide a specific level-of-effort within a definite period of time.

§3-505 Cost Incentive Contracts.

(1) A cost incentive type of contract provides for the reimbursement to the contractor of allowable costs incurred up to the ceiling amount and establishes a formula whereby the contractor
is rewarded for performing at less than target cost (that is, the parties' agreed best estimate of the cost of performing the contract) or is penalized if it exceeds target cost. The profit or fee under such a contract will vary inversely with the actual, allowable costs of performance and, consequently, is dependent on how effectively the contractor controls cost in the performance of the contract.

(2) In a fixed-price cost incentive contract, the parties establish at the outset a target cost, a target profit (that is, the profit which will be paid if the actual cost of performance equals the target cost), a formula which provides a percentage increase or decrease of the target profit depending on whether the actual cost of performance is less than or exceeds the target cost, and a ceiling price. After performance of the contract, the actual cost of performance is arrived at based on the total incurred allowable costs as determined in accordance with Chapter 7 (Cost Principles) of these regulations and as provided in the contract. The final contract price then is established in accordance with the formula using the actual cost of performance. The final contract price may not exceed the ceiling price. The contractor is obligated to complete performance of the contract, and, if actual costs exceed the ceiling price, the contractor suffers a loss.

(3) In a cost-reimbursement contract with cost incentive fee, the parties establish at the outset a target cost; a target fee; a formula for increase or decrease of fee depending on whether actual cost of performance is less than or exceeds the target cost; the maximum and minimum fee limitations; and a cost ceiling which represents the maximum amount which the Authority is obligated to reimburse the contractor. The contractor continues performance until the work is complete or costs reach the ceiling specified in the contract, including any modification thereof, whichever first occurs. After performance is complete or costs reach the ceiling, the total incurred, allowable costs reimbursed in accordance with Chapter 7 (Cost Principles) of these regulations and as provided in the contract are applied to the formula to establish the incentive fee payable to the contractor.

(4) Prior to entering into any cost incentive contract, the Contracting Officer shall make the written determination regarding the proposed contractor's accounting system. Prior to entering any cost-reimbursement contract with cost incentive fee, the written determination with justification shall be made.

§3-506 Performance Incentive Contracts.

In a performance incentive contract, the parties establish at the outset a pricing basis for the contract (i.e., cost reimbursement or fixed price), performance goals, and a formula which varies the profit or the fee if the specified performance goals are exceeded or not met. For example, early completion may entitle the contractor to a bonus while late completion may entitle the Authority to a price decrease.
§3-507  **Time and Materials and Labor Hour Contracts.**

(1) Time and materials contracts provide an agreed basis for payment for materials supplied and labor performed. Such contracts shall, to the extent possible, contain a stated ceiling or an estimate that shall not be exceeded without prior approval by the Authority and shall be entered into only after the Contracting Officer determines in writing that:

(a) Authority representatives have been assigned to closely monitor the performance of the work; and

(b) in the circumstances, it would not be practicable to use any other type of contract to obtain needed property, services, or construction in the time required and at the lowest cost or price to the Authority.

(2) A labor hour contract provides only for the payment of labor performed. It shall contain the same ceiling as provided in Subsection (1), above. Prior to the award of such contract, the Contracting Officer shall make the determination as required in Subsection (1), above.

(3) Time and materials and labor hour contracts are not preferred contracting methods. When used, the Contracting Officer shall make a written determination setting forth the reasons why other contracting methods cannot be used.

§3-508  **Definite and Indefinite Quantity Contracts.**

(1) A **definite quantity contract** is a fixed-price contract that provides for delivery of a specified quantity of supplies or services either at specified times or when ordered.

(2) An **indefinite quantity contract** is a contract for an indefinite amount of supplies or services to be furnished at specified times, or as ordered, that establishes unit prices of a fixed-price type. Generally, an approximate quantity or the best information available as to quantity is stated in the solicitation. The contract shall provide a minimum quantity the Authority is obligated to order and may also provide for a maximum quantity provision that limits the Authority's right to order.

(3) A **requirements contract** is an indefinite quantity contract for supplies or services that obligates the Authority to order all its actual requirements for such supplies or services during a specified period of time. For information, a realistic estimated total quantity shall be stated in the solicitation and the resulting contract; however, this estimate is not a representation to an offeror that the total quantity will be required or ordered. For the protection of the Authority and the contractor, requirements contracts shall include the following:

(a) a provision which requires the Authority to order its actual requirements of the supplies or services covered (however, the Authority must reserve in the solicitation and in the resulting contract the right to take bids separately if a particular quantity requirement arises which exceeds the Authority's normal requirements or an amount specified in the contract);

(b) two exemptions from ordering under the contract when:
(i) a Contracting Officer one level above the procuring Contracting Officer approves a finding that the supplies or service available under the contract will not meet a nonrecurring, special need of the Authority; or

(ii) supplies produced or services are performed incidental to the Authority's own programs.

§3-509  Leases.

(1) A lease is a contract for the use of equipment or other property under which title will not pass to the Authority at any time. Section 3-510 (Option Provisions) applies to a lease with a purchase option where title may pass to the Authority.

(2) A lease may be entered into provided:

   (a) it is in the best interest of the Authority;

   (b) all conditions for renewal and costs of termination are set forth in the lease; and

   (c) the lease is not used to circumvent normal procurement procedures.

§3-510  Option Provisions.

(1) Justification Required for Inclusion of Options in Procurements. Purchase options may not be included in Authority procurements unless the Contracting Officer determines in writing that there is a bona fide need.

(2) Evaluating Option Pricing Prior to Contract Awards. In soliciting bids or proposals that contain option pricing, the Authority shall evaluate bids or proposals for any option quantities or periods contained in the solicitation if the Authority intends to exercise the options after contract award.

(3) Contract Provision. When a contract is to contain an option for renewal, extension, or purchase, notice of such provision shall be included in the solicitation. Exercise of the option is always at the Authority discretion only, and not subject to agreement or acceptance by the contractor.

(4) Exercise of Option in Existing Contracts. Before exercising any option for renewal, extension, or purchase, the Contracting Officer shall

   (a) ascertain whether a competitive procurement is practical, in terms of pertinent competitive and cost factors, and would be more advantageous to the Authority than renewal or extension of the existing contract; and

   (b) determine in writing that the option pricing is better than prices available in the market, or that when it intends to exercise the option, the option is more advantageous.

(5) Lease with Purchase Option. A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding or
competitive sealed proposals, or the leased supply or facility is the only supply or facility that can meet the Authority’s requirements, as determined in writing by an officer above the level of the Contracting Officer. Before exercising such an option the Contracting Officer shall:

(a) investigate alternative means of procuring comparable supplies or facilities; and

(b) compare estimated costs and benefits associated with the alternative means and the exercise of such option, for example, the benefit of buying new state-of-the-art equipment compared to the estimated, initial savings associated with exercise of a purchase option.

(6) Exercise of Options Held by Another Public Entity. The Authority may use contract options held by another public entity provided the Contracting Officer determines in writing that the terms and conditions of the option are substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded and all other option reviews above have met.

(7) Five Year Contract Limitation on Rolling Stock. The Authority may enter into a multi-year contract to purchase rolling stock, with an option not exceeding five (5) years to buy additional rolling stock or replacement parts, however, the Authority may not exercise that option later than five (5) years after the date of its original contract.

(8) Awards Treated as Sole Source Procurements. The following actions constitute sole source awards:

(a) Failure to Evaluate Options before Awarding the Underlying Contract. If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a “sole source award”.

(b) Negotiating a Lower Option Price. Exercising an option after the recipient has negotiated a lower or higher price will also result in a “sole source award” unless that price can be reasonably determined from the terms of the original contract, or that price results from federal or state actions that can be reliably measured, such as changes in federal prevailing labor rates, for example.

§3-511 Approval of Accounting System.

Rules shall be issued requiring that contractors submit appropriate documentation prior to the award of contracts in which the Authority agrees to reimburse costs, confirming that:

(a) the proposed contractor’s accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

(b) the proposed contractor’s accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.
§3-512 Multi-Year Contracts.

§3-512.01 General.

(1) **Specified Period.** Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the Authority provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

(2) **Use.** A multi-year contract is authorized where:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) such a contract will serve the best interests of the Authority by encouraging effective competition or otherwise promoting economies in Authority procurement.

(3) **Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods.** When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

§3-512.02 Multi-Year Contract Procedure.

(1) **Solicitation.** The solicitation shall state:

(a) the amount of supplies or services required for the proposed contract period;

(b) that a unit price shall be given for each supply or service, and that such unit prices shall be the same throughout the contract (except to the extent price adjustments may be provided in the solicitation and resulting contract);

(c) that the multi-term contract will be cancelled only if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first; however, this does not affect either the Authority’s rights or the contractor's rights under any termination clause in the contract;

(d) that the Contracting Officer must notify the contractor on a timely basis that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period;

(e) whether bidders or offerors may submit prices for:

(i) the first fiscal period only;
§3

(ii) the entire time of performance only; or

(iii) both the first fiscal period and the entire time of performance;

(f) that a multi-term contract may be awarded and how award will be determined
including, if prices for the first fiscal period and entire time of performance are submitted,
how such prices will be compared; and

(g) that, in the event of cancellation as provided in this Section, the contractor will be
reimbursed the unamortized, reasonably incurred, nonrecurring costs.

(2) Award. Award shall be made as stated in the solicitation and permitted under the source
selection method utilized. Care should be taken when evaluating multi-term prices against
prices for the first fiscal period that award on the basis of prices for the first period does not
permit the successful bidder or offeror to "buy in", that is, give such bidder or offeror an undue
competitive advantage in subsequent procurements.

(3) Cancellation.

(a) "Cancellation," as used in multi-term contracting, means the cancellation of the
total requirements for the remaining portion of the contract because funds were not
appropriated or otherwise made available. The contract for the first fiscal period shall not
be cancelled. Cancellation results when the Contracting Officer:

(i) notifies the contractor of non-availability of funds for contract
   performance for any fiscal period subsequent to the first; or

(ii) fails to notify the contractor by the date set forth in the contract, unless the
   parties agree to extend such date, that funds are available for performance of the
   succeeding fiscal period and funds which may be used for the contract have not
   been appropriated or otherwise made available.

(b) These provisions on cancellation of multi-term contracts do not limit the rights of
   the Authority or the contractor under any termination clause of the contract if the contract
   is terminated pursuant to that clause rather than cancelled as provided in this Subsection.

§3-513 Incremental Award.

(1) General. An incremental award is an award of portions of a definite quantity
requirement to more than one contractor. Each portion is for a definite quantity and the sum of
the portions is the total definite quantity required. An incremental award may be used only
when awards to more than one bidder or offeror for different amounts of the same item are
necessary to obtain the total quantity or the required delivery.

(2) Intent to Use. If an incremental award is anticipated prior to issuing a solicitation, the
Authority shall reserve the right to make such an award and the criteria for award shall be stated
in the solicitation.
(3) **Determination Required.** The Contracting Officer shall make a written determination setting forth the reasons for the incremental award, which shall be made a part of the procurement file.

**§3-514 Multiple Award.**

(1) **General.** A multiple award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror when the Authority is obligated to order all of its actual requirements for the specified supplies or services from those contractors.

(2) **Limitations on Use.** A multiple award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Any multiple award shall be made in accordance with the provisions of Section 3-202 (Competitive Sealed Bidding), Section 3-203 (Competitive Sealed Proposals), Section 3-204 (Small Purchases), and Section 3-206 (Emergency Procurements), as applicable. Multiple awards shall not be made when a single award will meet the Authority’s needs without sacrifice of economy or service.

(3) **Contract and Solicitation Provisions.** All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract, provided, that the:

   (a) Authority shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its norm or an amount specified in the contract;

   (b) Authority shall reserve the right to take bids separately if the Contracting Officer approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the Authority; and

   (c) contract shall allow the Authority to procure supplies produced, or services performed, incidental to the Authority’s own programs, such as industries of correctional institutions, when such supplies or services satisfy the need.

(4) **Intent to Use.** If a multiple award is anticipated prior to issuing a solicitation, the Authority shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation.

**Determination Required.** The Contracting Officer shall make a written determination setting forth the reasons for a multiple award, which shall be made a part of the procurement file.

**Section 3-600 – Inspection of Plant and Audit of Records**

**§3-601 Right to Inspect Plant.**

The Authority may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the Authority.
§3-602 Right to Audit Records.

(1) Audit of Cost or Pricing Data. The Authority may, at reasonable times and places, audit the books and records of any person who has submitted data in substantiation of offered prices pursuant to Section 3-403 (Substantiation of Offered Prices) to the extent that such books and records relate to that data. Any person who receives a contract, change order, or contract modification for which such data is required, shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

(2) Contract Audit. The Authority shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for the retention period of not less than three (3) years or longer (as may be provided by state or federal laws or regulation) and calculated from the date of final payment under the prime contract and by the subcontractor for the same period for subcontracts.

Section 3-700 – Determinations and Reports

§3-701 Finality of Determinations.

The determinations required by Section 3-202 (Competitive Sealed Bidding, Correction or Withdrawal of Bids; Cancellation of Awards), Section 3-203 (Competitive Sealed Proposals, Conditions for Use), Section 3-203 (Competitive Sealed Proposals, Award), Section 3-205 (Sole Source Procurement), Section 3-206 (Emergency Procurements), Section 3-207 (Special Procurements), Section 3-401 (Responsibility of Bidders and Offerors, Determination of Non-responsibility), Section 3-403 (Substantiation of Offered Prices), Section 3-501 (Types of Contracts), Section 3-510 (Approval of Accounting System), Section 3-511 (Multi-Year Contracts, Use) and Section 5-103 (Choice of Project Delivery Methods) are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

§3-702 Reporting of Anticompetitive Practices.

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the appropriate federal, state, local or law enforcement officials.

§3-703 Retention of Procurement Records.

All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules prescribed by law or regulations.
Section 3-800 – Contract Administration System

§3-801 Procurement and Contract Files.

(1) General Content and Responsibility. The Contracting Officer shall maintain procurement and contract files that reflect the actions taken and decisions made by the Authority, including the rationale therefor, in conducting procurements and administering contracts, including matters which may result in controversy or dispute. These files shall be maintained by the Procurement Department.

(2) Procurement File Documentation. The documentation maintained in a procurement file shall detail the history of the procurement through award of contract and should include, at a minimum, the:

   (a) rationale for the method of procurement;
   (b) selection of the contract type;
   (c) reasons for selection or rejection of the contractor; and
   (d) basis for the contract price, including independent cost estimates.

(3) Contract File Documentation. The documentation in the contract file shall detail the history of the contract through contract close out. The contract file shall be maintained by the Procurement Department and serve as the “official” file. It should include documentation sufficient to demonstrate the contractor’s adherence to the terms of the contract and demonstrate that the Authority is following good administrative practice and sound business judgment in settling all contractual and administrative issues arising during contract performance. The contract file should include, at a minimum:

   (a) the executed contract and Notice of Award;
   (b) performance and payment bonds, bond-related documentation, and correspondence with any sureties;
   (c) contract-required insurance documentation;
   (d) post-award (pre-performance) correspondence from or to the contractor or others;
   (e) Notice to Proceed;
   (f) approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements;
   (g) modifications or changes to contracts including the rationale for the change, change orders issued, and documentation reflecting any time and or increases to or decreases from the contract price or time extensions provided as a result of those modifications;
(h) documentation regarding settlement of claims and disputes including, as appropriate, results of audit and legal reviews of the claims and approval by the proper authority (i.e., Board of Directors, Chief Executive Officer, etc.) of the settlement amount;

(i) documentation regarding stop work and suspension of work orders and termination actions (convenience, as well, as default); and

(j) release of claims and documentation relating to contract closeout.
CHAPTER 4 – SPECIFICATIONS

Section 4-100 – Purpose, Policies, Authority and Duties

§4-101 Purpose.

(1) These policies set standards for the preparation, maintenance, and content of specifications for supplies, services, and construction required by the Authority.

(2) The purpose of a specification is to serve as a basis for obtaining a supplies, service, or construction adequate and suitable for the Authority's needs in a cost effective manner taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs.

§4-102 Policies for Specifications Preparation.

(1) It is a policy of the Authority that specifications be drafted with the objective of clearly and accurately describing the Authority’s requirements for the supplies, services and construction to be procured.

(2) In competitive procurements, specifications may not contain features that unduly restrict competition, nor be exclusionary, discriminatory, or in violation of laws or regulations, and must be written in a manner that encourage full and open competition.

(3) Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the Authority. It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of supplies and services and not for the procurement of supply-type items for a construction project.

(4) It is the general policy of the Authority to procure standard commercial products and services whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.

(5) When it is impractical or uneconomical to write a clear and accurate specification of the supplies or services to be procured, a “brand name or equal” description may be used to define the performance or other salient characteristics of the supply or service sought. The specific features or essential characteristics of the named brand which must be met by offerors of “an equal” proposal must be clearly stated in the specification.

(6) When there will be no substantial conflict of interest and it is otherwise in the best interest of the Authority, a contract may be entered into to prepare specifications for the Authority's use in the procurement of supplies, services, or construction.

(7) In an emergency under Section 3-206 (Emergency Procurements), any necessary specifications may be utilized without regard to provisions of this Chapter.
§4-103  Authority and Duties.

(1) The Chief Executive Officer or his designee shall be responsible for:

(a) monitoring the use of specifications for supplies, services, and construction required by the Authority;

(b) ensuring that specifications are completed in a sufficient time in advance of the Authority's requirements to permit selection and implementation of the appropriate procurement method;

(c) maintaining a contract administration system to ensure that contractors comply with specifications; and

(d) acquiring specification writing services from sources outside of the Authority if the Authority lacks qualified personnel to write its own specifications.

(2) The Procurement Department shall review specifications to be used in procurements to determine that they meet the policies specified above.

Section 4-200 – Procedures

§4-201  General.

(1) This Section applies to all persons who may prepare a specification for the Authority's use. A specification may provide alternate descriptions of supplies, services, or construction where two or more design, functional, or performance criteria will satisfactorily meet the Authority's requirements. Specifications should not include any solicitation or contract term or condition such as a requirement for time or place of bid opening, time of delivery, payment, liquidated damages, or qualification of bidders.

(2) This Subsection covers brand name or equal specifications and shall apply whenever brand names are used in specifications, except as specified below.

§4-202  Brand Name or Equal Specifications.

(1) Brand name or equal specifications may be prepared to be used when the Contracting Officer determines in writing that:

(a) no specification for a common or general use item or qualified products list is available;

(b) time does not permit the preparation of another form of specification, not including a brand name specification;
(c) the nature of the product or the nature of the Authority's requirements makes use of a brand name or equal specification suitable for the procurement;

(d) when it is uneconomical to write a clear and accurate specification for the supplies or services to be acquired; or

(e) use of a brand name or equal specification is in the Authority's best interest.

(2) Brand name or equal specifications shall seek to designate three (3) or as many different brands as are practicable as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award. Brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required to meet the needs of the Authority.

(3) Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

(4) A brand name specification is restrictive and may be used only when the Contracting Officer makes a written determination that only the identified brand name item or items will satisfy the Authority's needs. The Contracting Officer shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable.

§4-203 Design and Performance Specifications.

(1) Specifications detailing the manner or method of performance are often treated as design specifications. Contrasted with these are performance specifications, which leave the details of performance, and the details of design, to the contractor's discretion.

(2) Design specifications may be used when the Authority takes ownership and responsibility for design and related omissions, errors, and deficiencies in the specifications and drawings (there is an implied warranty that the detailed designs or processes will result in an end item which functions as required).

(3) Performance specifications may be used when the specification sets forth an objective or end result to be achieved and describe technical requirements in terms of "functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards". When performance specifications are used, the contractor shall be held responsible for selecting the means of accomplishing the task and assumes responsibility for its selection.

(4) Performance specifications are preferred for use. Detailed product specifications should be avoided if at all possible.
§4-204  Qualified Products List.  

A qualified products list is a listing of products that have been tested and found to satisfy all of the specified requirements. It may be developed when testing or examination of the supplies or construction prior to issuance of the solicitation is desirable or necessary in order to best satisfy the Authority's requirements. When developing a qualified products list, a representative group of potential suppliers shall be solicited in writing to submit products for testing or examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with prior published requirements. Except as otherwise provided by law or regulation, information provided by the supplier will be kept confidential when requested in writing by the supplier. However, test results used in formulating qualified products lists shall be made public but in a manner so as to protect the confidentiality of the identity of the competitors by, for example, using numerical designations.

§4-205  Full and Open Competition – Nonrestrictive Specifications.  

(1)  All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of unduly restricting competition or exclusively requiring a proprietary supply, service, or construction, or procurement from a sole source, unless no other manner of description will suffice. In that event, a written determination shall be made that it is not practicable to use a less restrictive specification.

(2)  It is the general policy of the Authority to ensure that contract changes are within the general scope of the contract.

§4-206  Specifications and Procurement Methods.  

(1)  Where the supplies or services to be acquired are described in a performance or functional specification, or if described in detailed technical specifications, the competitive sealed proposals method of procurement should be used

(2)  Generally, where a complete, adequate, precise, and realistic specification, the competitive sealed bidding method of procurement should be used

§4-207  Specifications Prepared by Others.  

(1)  The requirements of this Chapter 4 shall apply to all specifications prepared by other than Authority personnel, including, but not limited to, those prepared by consultants, architects, engineers, designers, and other draftsmen. Contracts for the preparation of specifications by other than Authority personnel shall require the specification writer to adhere to these requirements.

(2)  When using specifications prepared by other than Authority personnel, the Authority should take appropriate steps to prevent or mitigate organizational conflicts of interest that would result in conflicting roles that might bias a contractor’s judgment or would result in unfair competitive advantage.
CHAPTER 5 – PROCUREMENT OF INFRASTRUCTURE FACILITIES AND SERVICES

Section 5-100 - Contracting for Infrastructure Facilities and Services

§5-101 Project Delivery Methods Authorized.

(1) The following project delivery methods are authorized for procurements relating to the design, construction, routine operation, routine repair, and routine maintenance of infrastructure facilities and services:

   (a) design-bid-build (including construction management at-risk);
   
   (b) operations and maintenance;
   
   (c) design-build;
   
   (d) design-build-operate-maintain; and
   
   (e) design-build-finance-operate-maintain.

(2) Participation in a report or study that is subsequently used in the preparation of design requirements for a project shall not disqualify a firm from participating as a member of a proposing team in a design-build, design-build-operate-maintain, or design-build-finance-operate-maintain procurement unless such participation would provide the firm with a substantial competitive advantage or some other organizational conflict of interest exists.

§5-102 Source Selection Methods Assigned to Project Delivery Methods.

(1) Scope. This Section specifies the source selection methods applicable to procurements for the project delivery methods identified in this Section, except as provided in Chapter 3 (Small Purchases, Sole Source Procurement, Emergency Procurements and Special Procurements).

(2) Design-bid-build (and Construction Management At-Risk).

   (a) Design. Architectural and Engineering Services. The qualifications based selection process set forth in Section 5-104 (Architectural and Engineering Services) shall be used to procure architectural and engineering services in design-bid-build procurements.

   (b) Construction. Competitive sealed bidding shall be used to procure construction in design-bid-build procurements, except the use of competitive sealed proposals is authorized to procure construction management at-risk services.
(3) **Operations and maintenance.** Contracts for operations and maintenance shall be procured using the procurement methods set forth in Sections 3-202 through 3-206 (Methods of Source Selection).

(4) **Design-build.** Contracts for design-build shall be procured by competitive sealed proposals, except where the Contracting Officer determines in writing that another procurement method would be more advantageous to the Authority.

(5) **Design-build-operate-maintain.** Contracts for design-build-operate-maintain shall be procured by competitive sealed proposals.

(6) **Design-build-finance-operate-maintain.** Contracts for design-build-finance-operate-maintain shall be procured by competitive sealed proposals.

§5-103 **Choice of Project Delivery Methods.**

(1) Before choosing the construction contracting method to be used, a careful assessment must be made of requirements the project must satisfy and those other characteristics that would be desirable. In addition to those set forth in Subsections (2) and (3) below, some of the factors to consider are the:

   (a) date the project must be ready to be occupied;

   (b) type of project;

   (c) extent to which the Authority's requirements and the ways in which they are to be met are known;

   (d) location of the project and whether a contractor's site may be used; and

   (e) size, scope, complexity, and economics of the project.

(2) The following factors relating to the Authority's resources should be considered:

   (a) the amount and type of financing available for the project, including whether the budget is fixed or flexible, and the source of funding (for example, general or special authorization, federal assistance monies, or bonds);

   (b) a realistic appraisal of the qualifications and experience the Authority's personnel can bring to the project and, of equal importance, how much time such personnel can devote to the project; and
(c) the availability of outside consultants may be considered (such consultants may be able to handle tasks and supply valuable expertise otherwise unavailable to the Authority).

(3) Choice of the proper construction contracting method entails not only the internal examination described in this Section but must take into account the characteristics, experience, and availability of the contractors who can work on the project. The design firms the Authority may contract with to prepare the plans and specifications must be evaluated as a group to determine whether they can efficiently divide the work into specialty packages, if multiple prime contractors are to be used, or if the project can be designed in phases appropriate to use of phased design and construction. Prospective construction contractors also must be appraised as a group to determine whether they have the capability and willingness to bid on the construction project as designed and as required by the contracting method chosen. Similarly, if the contracting method involves use of consultants, an evaluation of the availability of qualified consultants also should be made. If the design-build method or some variation of it is considered, availability of firms capable of both designing and constructing the facility must be ascertained. In respect to all of the potential contractors, it is important to consider the amount of competition currently in the market for the particular type of contract and whether a price can be obtained that is fair and reasonable when considered together with the benefit to the Authority potentially obtainable from such a contract.

(4) The Contracting Officer is responsible for selecting an appropriate project delivery method for each project.

(5) Bond, insurance, and other security provisions shall be included in procurements where appropriate.

(6) The Contracting Officer shall execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular project delivery method for each project.

§5-104 Architectural and Engineering Services.

(1) Policy. It is the policy of the Authority to negotiate contracts for Architectural and Engineering Services on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

(2) Architectural and Engineering Selection Committee. In the procurement of architectural and engineering Services, the Contracting Officer shall encourage firms engaged in the lawful practice of their profession to submit a statement of qualifications and performance data. A Selection Committee for architectural and engineering services contracts shall be established by the Contracting Officer. The Selection Committee shall evaluate current statements of qualifications and performance data, together with those that may be submitted by other firms
regarding the proposed contract. The Selection Committee shall conduct discussions with no less than three (3) firms regarding the contract and the relative utility of alternative methods of approach for furnishing the required services, and then shall select therefrom, in order of preference, based upon criteria established and published by the Selection Committee, no less than three (3) of the firms deemed to be the most highly qualified to provide the services required.

(3) Negotiation.

(a) The Contracting Officer shall negotiate a contract with the highest qualified firm for Architectural and Engineering Services at compensation which the Contracting Officer determines in writing to be fair and reasonable. In making this decision, the Contracting Officer shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. For any lump-sum or cost-plus-a-fixed-fee professional service contract over the threshold specified in Section 287.055, Florida Statutes, the Authority shall require the firm receiving the award to execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract under which such a certificate is required must contain a provision that the original contract price and any additions thereto will be adjusted to exclude any significant sums by which the agency determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments must be made within one year following the end of the contract.

(b) If the Contracting Officer is unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the Contracting Officer determines to be fair and reasonable, negotiations with that firm shall be formally terminated. The Contracting Officer shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Contracting Officer shall formally terminate negotiations. The Contracting Officer shall then undertake negotiations with the third most qualified firm. Should the Contracting Officer be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the Contracting Officer shall select additional firms in order of their competence and qualifications, and the Contracting Officer shall continue negotiations in accordance with this Section until an agreement is reached or there are no qualified firms remaining in the competition.

(4) Prohibition against Contingent Fees. Each contract entered into by the Authority for professional services must contain a prohibition against contingent fees that complies with Section 287.055(6), Florida Statutes.
§5-105 Enterprise Information Technology Infrastructure Platform

HART has implemented an Enterprise Information Technology Infrastructure Platform that will support the Agency’s future technology growth. The Agency has invested a substantial amount of funding in the platform and replacing it would be cost prohibitive. Contracts for all equipment or services for the Enterprise Infrastructure Platform shall require a standardized brand justification signed by one level higher than the Director of Procurement and Contracts Administration.

Section 5-200 - Bonds, Insurance, Guarantees

§5-201 Bid Guarantee.

(1) Requirement for Bid Guarantees. Bid guarantees shall be in an amount equal to at least five percent (5%) of the amount of the bid for all construction contracts in excess of amounts established by applicable federal or state law or regulation. The “bid guarantee” must consist of a firm commitment such as a bid bond provided by a surety authorized to do business in the State of Florida, certified check, or other negotiable instrument accompanying a bid to ensure that the bidder will honor its bid upon acceptance. Nothing herein prevents the requirement of such bonds on such contracts under the amount established by regulation when the circumstances warrant.

(2) Rejection of Bids for Noncompliance with Bid Guarantee Requirements. When the Invitation for Bids requires a guarantee, noncompliance requires that the bid be rejected unless, it is determined that the bid fails to comply in a non-substantial manner with the bid guarantee requirements when:

(a) only one bid is received and there is not sufficient time to rebid the contract;

(b) the amount of the bid guarantee submitted, though less than the amount required by the Invitation for Bids, is equal to or greater than the difference in the price stated in the next higher acceptable bid; or

(c) the bid guarantee becomes inadequate as a result of the correction of a mistake in the bid or bid modification, if the bidder increases the amount of guarantee to required limits within forty-eight (48) hours after the bid opening.

(3) Withdrawal of Bids. After bids are opened, they shall be irrevocable for the period specified in the Invitation for Bids. If a bidder is permitted to withdraw its bid before award, or is excluded from the competition before award, no action shall be made against the bidder or the bid guarantee.

§5-202 Contract Performance and Payment Bonds.

(1) When Required – Amounts. When a construction, design-build, design-build-operate-maintain, or design-build-finance-operate-maintain contract is awarded in excess of amounts established by applicable federal or state law or regulation for bonding, the following bonds or guarantees shall be delivered to the Authority and shall become binding on the parties upon the
execution of the contract:

(a) **Performance Bond.** A performance bond satisfactory to the Authority, executed by a surety company authorized to do business in the State of Florida or otherwise secured in a manner satisfactory to the Authority, in an amount equal to 100% of the contract price. A performance bond is obtained to ensure completion of the obligations under the contract. The performance bond shall be delivered by the contractor to the Authority before receiving a notice to proceed or being allowed to start work. If a contractor fails to deliver the required performance bond, the Authority may terminate the contract for default and award of the contract may be made to the next lowest bidder.

(b) **Payment Bond.** A payment bond satisfactory to the Authority, executed by a surety company authorized to do business in the State of Florida, or otherwise secured in a manner satisfactory to the Authority, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the construction work provided for in the contract. The bond shall be in an amount equal to 100% of the contract price. The payment bond shall be delivered by the contractor to the Authority before receiving a Notice to Proceed to start work. If a contractor fails to deliver the required payment bond, the Authority may terminate the contract for default and award of the contract may be made to the next lowest bidder.

(2) **Reduction of Bond Amounts.** The Chief Executive Officer may reduce the amount of performance and payment bonds in accordance with applicable federal or state law or regulation.

(3) **Reduction of Amount During Performance.** If permitted by the contract and solicitation, the Contracting Officer may reduce the amount of the performance bond as work is completed if such officer determines in writing that such reduction is in the best interest of the Authority. A copy of the analysis shall be available for public inspection.

(4) **Authority to Require Additional Bonds.** Nothing in this Section shall be construed to limit the right of the Authority to require a performance bond or other guarantee in addition to such bonds, or in circumstances other than specified in Subsection (1) above.

(5) **Suits on Payment Bonds – Right to Institute.** Every person who has furnished labor or material to the contractor or its subcontractors for the work provided in the contract, in respect of which a payment bond is furnished under this Section, and who has not been paid in full therefore before the expiration of a period of ninety (90) days after the day on which the last of the labor was done or performed by such person or material was furnished or supplied by such person for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action for the sum or sums justly due such person; provided, however, that any person having a direct contractual relationship with a subcontractor of the contractor, but no contractual relationship express or implied with the contractor furnishing said payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within ninety (90) days from the date on which such person did or performed the last of the labor or furnished
or supplied the last of the material upon which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be personally served or served by other form of receipted transmittal that confirms actual delivery to the contractor at any place the contractor maintains an office or conducts its business.

(6) Suits on Payment Bonds – Where and When Brought. Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the county or district in which the construction contract was to be performed, but no such suit shall be commenced after the expiration of one (1) year after the day on which the last of the labor was performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in any such suit.

§5-203 Bond Forms and Copies.

(1) Bond Forms. The Chief Executive Officer shall determine the form of the bonds required by this Section.

(2) Certified Copies of Bonds. Any person may request and obtain from the Authority a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

§5-204 Surety Bond Insurers.

When the contract amount of a project does not exceed $500,000 and when public funds are utilized for the project, a person, the Authority shall not refuse, as surety for the project, bid bonds, performance bonds, labor and materials payment bonds, or any other surety bonds which are issued by a surety company which fulfills each of the following provisions;

(a) the surety company is licensed to do business in the State of Florida;

(b) the surety company holds a certificate of authority authorizing it to write surety bonds in this state;

(c) the surety company has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued;

(d) the surety company is otherwise in compliance with the provisions of the Florida Insurance Code; and

(e) the surety company holds a currently valid certificate of authority issued by the United States Department of the Treasury under 31 U.S.C. ss. 9304-9308.

§5-205 Errors and Omissions Insurance.

The Contracting Officer shall require offerors to provide appropriate errors and omissions
insurance to cover architectural and engineering services under the project delivery methods set forth in Section 5-101 (1) (a), (c), (d), and (e).

(a) For design services in design-bid-build or design-build procurements. The Authority shall include in the solicitation such requirements as the Contracting Officer deems appropriate for errors and omissions insurance (commonly called “professional liability insurance” in trade usage) coverage of architectural and engineering services in the solicitation for design services in design-bid-build or design-build procurements. Prior to award, the Contracting Officer, or his designee, shall review and approve the errors and omissions insurance coverage for all contracts.

(b) For Construction Management Services. The Authority shall include in the solicitation for Construction Management Services such requirements as the Contracting Officer deems appropriate for errors and omissions insurance coverage. Errors and omissions (or professional liability) insurance coverage is typically not required when the Authority is conducting a Construction Management (At-Risk) procurement.

§5-206 Other Forms of Security.

The Contracting Officer may require a Request for Proposals to include one or more of the following forms of security to assure the timely, faithful, and uninterrupted provision of operations and maintenance services procured separately, or as one element of design-build-operate-maintain or design-build-finance-operate-maintain services:

(a) operations period surety bonds that secure the performance of the contractor’s operations and maintenance obligations under the project delivery methods set forth in Section 5-101 (1) (b), (d) and (e);

(b) letters of credit in an amount appropriate to cover the cost to the Authority of preventing infrastructure service interruptions for a period up to twelve months under the project delivery methods set forth in Section 5-101 (1) (b), (d) and (e); and

(c) appropriate written guarantees from the contractor (or depending upon the circumstances, from parent corporations) to secure the recovery of re-procurement costs to the Authority in the event of a default in performance by the contractor.

Section 5-300 - Contract Clauses and Fiscal Responsibility

§5-301 Contract Clauses and Their Administration.

(1) Contract Clauses. The Contracting Officer shall include contract clauses providing for adjustments in prices, time of performance, or other contract provisions, as appropriate, and covering the following subjects for contracts covered by this Chapter:

(a) the unilateral right of the Authority to order in writing:
(i) changes in the work within the scope of the contract; and

(ii) changes in the time of performance of the contract that do not alter the scope of the contract work;

(b) variations occurring between estimated quantities of work in a contract and actual quantities;

(c) suspension of work ordered by the Authority; and

(d) site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site conditions clauses promulgated by the Contracting Officer need not be included in a contract:

(i) when the contract is negotiated;

(ii) when the contractor provides the site or the design; or

(iii) when the parties have otherwise agreed with respect to the risk of differing site conditions.

(2) Field Change Orders

The Contracting Officer may delegate to the HART Project Manager the authority to direct changes as identified in paragraph (1)(a) above on site of the project that require NO adjustment to the contract price.

Prior to the Project Manager providing the Contractor direction for a no cost change, the Project Manager shall obtain written concurrence from the Contractor’s authorized site representative.

These Field Change Orders shall be recorded in written form and provided to the Project Engineer of Record or Architect as appropriate, as well as the Contracting Officer for inclusion into project drawings and the contract file.

(3) Price Adjustments.

(a) Adjustments in price pursuant to clauses promulgated under Subsection (1) of this Section shall be computed in one or more of the following ways:

by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

by unit prices specified in the contract or subsequently agreed upon;

by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
in such other manner as the contracting parties may mutually agree; or

in the absence of agreement by the parties, by a unilateral determination by the Contracting Officer of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed in accordance with applicable regulation.

A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 3-403 (Independent Cost Estimates and Substantiation of Offered Prices).

(4) **Additional Contract Clauses.** Additional contract clauses may be included providing for appropriate remedies and covering the following subjects:

(a) liquidated damages as appropriate;

(b) specified excuses for delay or nonperformance;

(c) termination of the contract for default; and

(d) termination of the contract in whole or in part for the convenience of the Authority

### §5-302 Fiscal Responsibility

Every contract modification, change order, or contract price adjustment under a contract with the Authority shall be subject to prior written certification by an official responsible for monitoring and reporting upon the status of the costs of the total project budget or contract budget, as to the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget. In the event that the certification of the responsible official discloses a resulting increase in the total project budget and/or the total contract budget, the Contracting Officer shall not execute or make such contract modification, change order, or adjustment in contract price unless sufficient funds are available therefor, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract budget as it existed prior to the contract modification, change order, or adjustment in contract price under consideration; provided, however, that with respect to the validity, as to the contractor, of any executed contract modification, change order, or adjustment in contract price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this Section.
CHAPTER 6 – MODIFICATIONS AND TERMINATIONS OF CONTRACTS FOR SUPPLIES AND SERVICES

Section 6-100 – Contract Clauses and Their Administration

§6-101 Contract Clauses and Their Administration.

(1) Contract Clauses. The Chief Executive Officer shall promulgate procedures permitting or requiring the inclusion of clauses providing for adjustments in prices, time of performance, or other contract provisions as appropriate covering the following subjects:

(a) the unilateral right of the Authority to order in writing:

(i) changes in the work within the scope of the contract; and

(ii) temporary stopping of the work or delaying performance; and

(b) variations occurring between estimated quantities of work in a contract and actual quantities.

(2) Price Adjustments.

(a) Adjustments in price pursuant to clauses promulgated under Subsection (1) above shall be computed in one or more of the following ways:

(i) by agreement on a fixed-price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(ii) by unit prices specified in the contract or subsequently agreed upon;

(iii) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

(iv) in such other manner as the contracting parties may mutually agree; or

(v) in the absence of agreement by the parties, by a unilateral determination by the Contracting Officer of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the Contracting Officer in accordance with applicable sections of Chapter 7 (Cost Principles) and subject to the provisions of Chapter 9 (Administrative Remedies and Appeals).
(b) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 3-403.02 (Requirement for Cost or Pricing Data).

(3) **Additional Contract Clauses.** The Chief Executive Officer shall promulgate procedures including, but not limited to, permitting or requiring the inclusion in Authority contracts of clauses providing for appropriate remedies and covering the following subjects:

(a) liquidated damages as appropriate;

(b) specified excuses for delay or nonperformance;

(c) termination of the contract for default; and

(d) termination of the contract in whole or in part for the convenience of the Authority.

(4) **Modification of Clauses.** The Contracting Officer may vary the clauses promulgated by the Chief Executive Officer under Subsection (1) and Subsection (3) of this Section for inclusion in any particular Authority contract; provided that any variations are supported by legal concurrence and a written determination that states the circumstances justifying such variation and provided that notice of any such material variation be stated in the Invitation for Bids or Request for Proposals.
CHAPTER 7 – COST PRINCIPLES

Section 7-100 – Purpose, Applicability, Limitations, Allowability, and Reasonability

§7-101 Purpose.

The cost principles and procedures contained in this Chapter shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs, provided that if a written determination is approved by the Chief Executive Officer, such cost principles may be modified by contract.

§7-102 Application.

(1) The cost principles and procedures contained in this Chapter shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs, provided that any deviation from these cost principles may be made as provided in Section 7-114 (Authority to Deviate from Cost Principles).

(2) The cost principles and procedures set forth in this Chapter may be used as guidance in:

(a) the establishment of contract cost estimates and prices under contracts awarded on the basis of competitive sealed proposals where the award may not be based on substantiation of offered prices;

(b) the establishment of price adjustments for contract changes including contracts that have been let on the basis of competitive sealed bidding or otherwise based on adequate price competition;

(c) the pricing of termination for convenience settlements; and

(d) any other situation in which cost analysis is used.

§7-103 Limitation.

These cost principles regulations are not applicable to:

(a) the establishment of prices under contracts awarded on the basis of competitive sealed bidding or otherwise based on adequate price competition rather than the analysis of individual, specific cost elements, except that this Chapter does apply to the establishment of adjustments of price for changes made to such contracts;

(b) prices which are fixed by law or regulation; and

(c) prices which are based on established catalogue prices or established market prices.
§7-104  **Allowable Costs.**

(1) Any contract cost proposed for estimating purposes or invoiced for cost-reimbursement purposes shall be allowable to the extent provided in the contract and, if inconsistent with these cost principles, approved as a deviation under Section 7-114 (Authority to Deviate from Cost Principles). The contract shall provide that the total allowable cost of a contract is the sum of the allowable direct costs actually incurred in the performance of the contract in accordance with its terms, plus the properly allocable portion of the allowable indirect costs, less any applicable credits (such as discounts, rebates, refunds, and property disposal income).

(2) All costs shall be accounted for in accordance with generally accepted accounting principles and in a manner that is consistent with the contractor's usual accounting practices in charging costs to its other activities. In pricing a proposal, a contractor shall estimate costs in a manner consistent with its cost accounting practices used in accumulating and reporting costs.

(3) The contract shall provide that costs shall be allowable to the extent they are:

(a) reasonable, as defined in Section 7-105 (Reasonable Costs);

(b) allocable, as defined in Section 7-106 ( Allocable Costs);

(c) lawful under any applicable law;

(d) not unallowable under Section 7-109 (Treatment of Specific Costs) or Section 7-110 (Costs Requiring Prior Approval to be Allowable as Direct Costs); and

(e) in the case of costs invoiced for reimbursement, actually incurred or accrued and accounted for in accordance with generally accepted accounting principles.

§7-105  **Reasonable Costs.**

Any cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business in that industry. In determining the reasonableness of a given cost, consideration shall be given to:

(a) requirements imposed by the contract terms and conditions;

(b) whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;

(c) the restraints inherent in, and the requirements imposed by, such factors as generally accepted sound business practices, arms' length bargaining, and federal and state laws and regulations;
(d) the action that a prudent business manager would take under the circumstances, including general public policy and considering responsibilities to the owners of the business, employees, customers, and the Authority;

(e) significant deviations from the contractor's established practices which may unjustifiably increase the contract costs; and

(f) any other relevant circumstances.

§7-106 Allocable Costs.

(1) A cost is allocable if it is assignable or chargeable to one or more cost categories in accordance with relative benefits received and if it:

(a) is incurred specifically for the contract;

(b) benefits both the contract and other work, and can be distributed to both in reasonable proportion to the benefits received; or

(c) is necessary to the overall operation of the business, although a direct relationship to any particular cost objective may not be evident.

(2) Costs are allocable as direct or indirect costs. Similar costs (those incurred for the same purpose, in like circumstances) shall be treated consistently either as direct costs or indirect costs except as provided by these regulations. When a cost is treated as a direct cost in respect to one cost objective, it and all similar costs shall be treated as a direct cost for all cost objectives. Further, all costs similar to those included in any indirect cost pool shall be treated as indirect costs. All distributions to cost objectives from a cost pool shall be on the same basis.

§7-107 Direct Costs.

A direct cost is any cost which can be identified specifically with a particular final cost objective. A direct cost shall be allocated only to its specific cost objective. To be allowable, a direct cost must be incurred in accordance with the terms of the contract.

§7-108 Indirect Costs.

(1) An indirect cost is one identified with no specific final cost objective or with more than one final cost objective. Indirect costs are those remaining to be allocated to the several final cost objectives after direct costs have been determined and charged directly to the contract or other work as appropriate. Any direct costs of minor dollar amount may be treated as indirect costs, provided that such treatment produces substantially the same results as treating the cost as a direct cost.

(2) Indirect costs shall be accumulated into logical cost groups (or pools), with consideration of the reasons for incurring the costs. Each group should be distributed to cost objectives benefiting from the costs in the group. Each indirect cost group shall be distributed to the cost
objectives substantially in proportion to the benefits received by the cost objectives. The number and composition of the groups and the method of distribution should not unduly complicate indirect cost allocation where substantially the same results could be achieved through less precise methods.

(3) The contractor's method of distribution may require examination when:

(a) any substantial difference exists between the cost patterns of the work performed under the contract and the contractor's other work;

(b) any significant change occurs in the nature of the business, the extent of subcontracting, fixed asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances; or

(c) indirect cost groups developed for a contractor's primary location are applied to off-site locations. Separate cost groups for costs allocable to off-site locations may be necessary to distribute the contractor's costs on the basis of the benefits accruing to the appropriate cost objectives.

(4) The base period for indirect cost allocation is the one in which such costs are incurred and accumulated for distribution to work performed in that period. Normally, the base period is the contractor's fiscal year. A different base period may be appropriate under unusual circumstances. In such cases, an appropriate period should be agreed to in advance.

§7-109 Treatment of Specific Costs.

(1) Advertising. Advertising costs are those incurred in using any advertising media when the advertiser has control over the form and content of what will appear, the media in which it will appear, or when it will appear. Advertising media include newspapers, magazines, radio, television, direct mail, trade papers, billboards, window displays, conventions, exhibits, free samples, and the like. All advertising costs except those set forth below are unallowable.

(2) The only allowable advertising costs are those for:

(a) the recruitment of personnel;

(b) the procurement of scarce items;

(c) the disposal of scrap or surplus materials; and

(d) the listing of a business's name and location in a classified directory.
(3) **Bad Debts.** Bad debts include losses arising from uncollectible accounts and other claims, such as dishonored checks, uncollected employee advances, and related collection and legal costs. All bad debt costs are unallowable.

(4) **Contingencies.**

(a) Contingency costs are contributions to a reserve account for unforeseen costs. Such contingency costs are unallowable except as provided in (b), below.

(b) For the purpose of establishing a contract cost estimate or price in advance of performance of the contract, recognition of uncertainties within a reasonably anticipated range of costs may be required and is not prohibited by this Subsection. However, where contract clauses are present which serve to remove risks from the contractor, there shall not be included in the contract price a contingency factor for such risks. Further, contributions to a reserve for self-insurance in lieu of, and not in excess of, commercially available liability insurance premiums are allowable as an indirect charge.

(5) **Depreciation and Use Allowances.**

(a) Depreciation and use allowances, that is, the allowance made for fully depreciated assets, are allowable to compensate contractors for the use of buildings, capital improvements, and equipment or for the provision of such facilities on a standby basis for subsequent use when such facilities are temporarily idle because of suspensions or delays not caused by the contractor, not reasonably foreseeable, and not otherwise avoidable when the contract was awarded. Depreciation is a method of allocating the acquisition cost of an asset to periods of its useful life. Useful life refers to the asset's period of economic usefulness in the particular contractor's operation as distinguished from its physical life. Use allowances provide compensation in lieu of depreciation or other equivalent costs. Consequently, these two methods may not be combined to compensate contractors for the use of any one type of property.

(b) The computation of depreciation or use allowances shall be based on acquisition costs. When the acquisition costs are unknown, reasonable estimates may be used.

(c) Depreciation shall be computed using any generally accepted method, provided that the method is consistently applied and results in equitable charges considering the use of the property. The straight-line method of depreciation is preferred unless the circumstances warrant some other method. However, the Authority will accept any method which is accepted by the Internal Revenue Service.

(d) In order to compensate the contractor for use of depreciated, contractor-owned property which has been fully depreciated on the contractor's books and records and is being used in the performance of a contract, use allowances may be allowed as a cost of that contract. Use allowances are allowable, provided that they are computed in accordance with an established industry or government schedule or other method mutually agreed upon by the parties. If a schedule is not used factors to consider in establishing the allowance are the original cost, remaining estimated useful life, the
reasonable fair market value, and the effect of any increased maintenance or decreased efficiency.

(6) **Entertainment.**

(a) Entertainment costs include costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodging, transportation, and gratuities. Entertainment costs are unallowable.

(b) Nothing herein shall make unallowable a legitimate expense for employee morale, health, welfare, food service, or lodging costs; except that, where a net profit is generated by such services, it shall be treated as a credit as provided in Section 7-111 (Applicable Credits). This Section shall not make unallowable costs incurred for meetings or conferences, including, but not limited to, costs of food, rental facilities, and transportation where the primary purpose of incurring such cost is the dissemination of technical information or the stimulation of production.

(7) **Fines and Penalties.** Fines and penalties include all costs incurred as the result of violations of, or failure to comply with, federal, State, and local laws and regulations. Fines and penalties are unallowable costs unless incurred as a direct result of compliance with specific provisions of the contract or written instructions of the Contracting Officer. [To the extent that worker's compensation is considered by state law to constitute a fine or penalty, it shall not be an unallowable cost under this Subsection.]

(8) **Gifts, Contributions and Donations.** A gift is property transferred to another person without the other person providing return consideration of equivalent value. Reasonable costs for employee morale, health, welfare, food services, or lodging are not gifts and are allowable. Contributions and donations are property transferred to non-profit institutions which are not transferred in exchange for supplies or services of equivalent fair market value rendered by a nonprofit institution. Gifts, contributions, and donations are unallowable.

(9) **Interest Costs.**

(a) Interest is generally an unallowable cost for purposes of determining the original contract price. Compensation for any interest expense incurred in connection with work originally contemplated under the contract will be deemed to be included in the fee or profit negotiated on the contract.

(b) Imputed interest on a contractor's expenditures made to pay allowable costs which are allocable to the performance of work required by change orders, suspension of work, or other acts of the Authority requiring additional work over and above that required by the original contract (hereinafter called "Additional Work") shall be an allowable cost. Imputed interest is an allowable cost in relation to such Additional Work in a negotiated settlement, if one can be agreed upon, or to the extent that it is determined administratively or judicially that the Authority is liable for such Additional Work. Such imputed interest shall be computed on expenditures from the date or dates on which the
contractor made expenditures for the performance of such Additional Work until the date of payment therefor by the Authority. The rate of interest shall be the prevailing prime rate charged by banks in Florida as determined by the State of Florida Auditor or Comptroller, at the time or times the contractor made such expenditures for Additional Work. Imputed interest on the costs of Additional Work shall not be allowable to the extent that it is otherwise recovered as profit, fee, or as interest on contractor claims pursuant to Section 9-600 (Interest).

(10) **Losses Incurred Under Other Contracts.** A loss is the excess of costs over income earned under a particular contract. Losses may include both direct and indirect costs. A loss incurred under one contract may not be charged to any other contract.

(11) **Material Costs.**

(a) Material costs are the costs of all supplies, including raw materials, parts, and components (whether acquired by purchase from an outside source or acquired by transfer from any division, subsidiary, or affiliate under the common control of the contractor), which are acquired in order to perform the contract. Material costs are allowable, subject to the requirements of this Section. In determining material costs, consideration shall be given to reasonable spoilage, reasonable inventory losses, and reasonable overages.

(b) Material costs shall include adjustments for all available discounts, refunds, rebates, and allowances which the contractor reasonably should take under the circumstances, and for credits for proceeds the contractor received or reasonably should receive from salvage and material returned to suppliers.

(c) Allowance for all materials transferred from any division (including the division performing the contract), subsidiary, or affiliate under the common control of the contractor shall be made on the basis of costs incurred by the transferor (determined in accordance with this Chapter), except the transfer may be made at the established price provided that the price of materials is not determined to be unreasonable by the Contracting Officer, the price is not higher than the transferor's current sales price to its most favored customer for a like quantity under similar payment and delivery conditions, and the price is established either:

(i) by the established catalogue price; or
(ii) by the lowest price offer obtained as a result of competitive sealed bidding or competitive sealed proposals conducted with other businesses that normally produce the item in similar quantities

(12) **Taxes.**

(a) Except as limited below, all allocable taxes which the contractor is required to pay and which are paid and accrued in accordance with generally accepted accounting principles are allowable.
(b) The following costs are unallowable:

(i) federal and local income taxes and federal excess profit taxes;

(ii) all taxes from which the contractor could have obtained an exemption, but failed to do so, except where the administrative cost of obtaining the exemption would have exceeded the tax savings realized from the exemption;

(iii) any interest, fines, or penalties paid on delinquent taxes unless incurred at the written direction of the Contracting Officer; and

(iv) income tax accruals designed to account for the tax effects of differences between taxable income and pretax income as reflected by the contractor's books of account and financial statements.

(c) Any refund of taxes which were allowed as a direct cost under the contract shall be credited to the contract. Any refund of taxes which were allowed as an indirect cost under a contract shall be credited to the indirect cost group applicable to any contracts being priced or costs being reimbursed during the period in which the refund is made.

(d) Direct government charges for services, such as water, or capital improvements, such as sidewalks, are not considered taxes and are allowable costs.

§7-110 Costs Requiring Prior Approval to be Allowable as Direct Costs.

(1) General. The costs described in Section 7-104 (Allowable Costs) are allowable as direct costs to cost reimbursement type contracts to the extent that they have been approved in advance by the Contracting Officer. In other situations the allowability of these costs shall be determined in accordance with general standards set out in these cost principles.

(2) Pre-Contract Costs. Pre-contract costs are those incurred in anticipation of, and prior to, the effective date of the contract. Such costs are allowable to the extent that they would have been allowable if incurred after the date of the contract; provided that, in the case of a cost-reimbursement type contract, a special provision must be inserted in the contract setting forth the period of time and maximum amount of cost which will be covered as allowable pre-contract costs.

(3) Bid and Proposal Costs. Bid and proposal costs are the costs incurred in preparing, submitting, and supporting bids and proposals. Reasonable ordinary bid and proposal costs are allowable as indirect costs in accordance with these cost principles regulations. Bid and proposal costs are allowable as direct costs only to the extent that they are specifically permitted by a provision of the contract or solicitation document. Where bid and proposal costs are allowable as direct costs, to avoid double accounting, the same bid and proposal costs shall not be charged as indirect costs.
(4) **Insurance.**

(a) Ordinary and necessary insurance costs are normally allowable as indirect costs. Direct insurance costs are the costs of obtaining insurance in connection with performance of the contract or contributions to a reserve account for the purpose of self-insurance. Self-insurance contributions are allowable only to the extent of the cost to the contractor to obtain similar insurance.

(b) Insurance costs may be approved as a direct cost only if the insurance is specifically required for the performance of the contract.

(c) Actual losses which should reasonably have been covered by permissible insurance or were expressly covered by self-insurance are unallowable unless the parties expressly agree otherwise in the terms of the contract.

(5) **Litigation Costs.** Litigation costs include all filing fees, legal fees, expert witness fees, and all other costs involved in litigating claims in court or before an administrative board. Litigation costs incident to the contract are allowable as indirect costs in accordance with these cost principles regulations except that costs incurred in litigation by or against the Authority are unallowable.

§7-111 **Applicable Credits.**

(1) **Reducing Costs.** Applicable credits shall be applied to reduce related direct or indirect costs.

(2) **Refund.** The Authority shall be entitled to a cash refund if the related expenditures have been paid to the contractor under a cost-reimbursement type contract.

§7-112 **Advance Agreements.**

(1) **Purpose.** Both the Authority and the contractor should seek to avoid disputes and litigation arising from potential problems by providing in the terms of the solicitation and the contract the treatment to be accorded special or unusual costs which are expected to be incurred.

(2) **Form Required.** Advance agreements may be negotiated either before or after contract award, depending upon when the parties realize the cost may be incurred, but shall be negotiated before a significant portion of the cost covered by the agreement has been incurred. Advance agreements shall be in writing, executed by both contracting parties, and incorporated in the contract.
(3) **Limitation on Costs Covered.** An advance agreement shall not provide for any treatment of costs inconsistent with these costs principles regulations unless a determination has been made pursuant to Section 7-114 (Authority to Deviate from Cost Principles).

§7-113 **Use of Federal Cost Principles.**

(1) **Cost Negotiations.** In dealing with contractors operating according to federal cost principles the Contracting Officer, after notifying the contractor, may use the federal cost principles as guidance in contract negotiations, subject to the below.

(2) **Incorporation of Federal Cost Principles; Conflicts between Federal Conflicts and This Chapter.** All requirements set forth in federal assistance instruments applicable to contracts let by the Authority under a federal assistance program must be satisfied. Therefore, to the extent that the cost principles which are specified in the assistance instrument conflict with the cost principles issued pursuant to Chapter 7 (Cost Principles) of the Authority’s Procurement Manual, the former shall control.

§7-114 **Authority to Deviate from Cost Principles.**

When the best interest of the Authority would be served by a deviation, the Contracting Officer may deviate from the cost principles set forth in this Manual; provided that a written determination shall be made by such officer specifying the reasons for the deviation and the deviation is approved in writing by the Chief Executive Officer. However, all costs must be reasonable, lawful, allocable, and accounted for in accordance with generally accepted accounting principles to be reimbursed, and a deviation shall not contravene this principle.
CHAPTER 8 – SUPPLY MANAGEMENT

Section 8-100 – General Provisions

§8-101 Definitions and Policy.

(1) "Supplies" means, for purposes of this Chapter, tangible personal property owned by the Authority.

(2) The Authority shall have discretion to classify as surplus any supplies that are not otherwise lawfully disposed of, that are obsolete or the continued use of which is uneconomical or inefficient, or which serve no useful function. Within the reasonable exercise of its discretion and having consideration for the best interests of the Authority, the value and condition of supplies classified as surplus, and the probability of such supplies being desired by the prospective bidder or donee to whom offered, the Authority may offer surplus supplies to other governmental entities for sale or donation or may offer the supplies to private nonprofit agencies as defined Section 273.01(3), Florida Statutes, by sale or donation. If the surplus supplies are offered for sale and no acceptable bid is received within a reasonable time, the Authority shall offer such property to other governmental entities or private nonprofit agencies on the basis of the foregoing criteria. Such offer shall disclose the value and condition of the supplies.

§8-102 Responsibilities.

(1) The Chief Executive Officer shall promulgate procedures governing:

   (a) the management of supplies during their entire life cycle;

   (b) the sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate method designated by regulation, provided that no employee of the owning or disposing department or workgroup shall be entitled to purchase any such supplies; and

   (c) transfer of excess supplies.

(2) The Chief Executive Officer’s written approval is required prior to the disposal of surplus supplies.

(3) Board of Director’s approval is required for real property, buildings, vehicles, other major equipment or any items whose original purchase was awarded by the Board.

(4) The responsibility to dispose of surplus supplies shall reside solely with the Procurement Department.
§8-103  **Objectives.**

The objectives of the Authority’s supply management program include preventing waste, continuing utilization of supplies, and obtaining a fair return of value upon disposal of supplies. To achieve these objectives, sound inspection, testing, warehousing, and inventory practices are called for, and effective means of transferring and disposing of property must be employed.

§8-104  **Quality Assurance, Inspection, and Testing.**

The Authority shall take such steps as deemed desirable to ascertain or verify that supplies, services, or construction items procured by such officer conform to specifications. In performing this duty, the Chief Executive Officer shall establish inspection and testing facilities, employ inspection personnel, enter into arrangements for the joint or cooperative use of laboratories and inspection and testing facilities, and contract with others for inspection or testing work as needed.

§8-105  **Inventory Management.**

The Chief Executive Officer shall have general supervision of all inventories of tangible personal property, whether warehoused or in use, belonging to the Authority. Any warehouses and similar storage areas shall be counted at least annually utilizing a generally accepted counting process such as year-end count of all items or intermittent cycle counting. Counting methods used shall be approved by the Chief Financial Officer.

§8-106  **Warehousing and Storage.**

The Chief Executive Officer shall exercise general supervision of any receiving, storage, and distribution facilities and services.

§8-107  **Authorization to Transfer, Sell, Trade-in or Dispose of Supplies.**

No Authority personnel may transfer, sell, trade-in, or otherwise dispose of supplies owned by the Authority without written authorization of the Chief Executive Officer.

§8-108  **Excess Supplies Notices.**

Authority personnel shall notify the Chief Executive Officer, on such forms and at such times as may be prescribed by the Procurement Department, of all excess supplies. In so doing, Authority personnel may suggest a dollar value per item or per lot that it desires to receive from any transfer or disposition of such excess supplies, but the suggestion shall not constitute the minimum sale or transfer amount. Any such figures shall not be public information prior to transfer or sale unless otherwise provided by law or regulation.

§8-109  **Transfer of Excess and Surplus Supplies.**

(1) Insofar as it is feasible and practical, the Chief Executive Officer shall offer and transfer excess supplies to other Authority departments for use.
(2) Where excess or surplus supplies cannot be used by the Authority, the Authority may transfer such supplies to other public entities. When this occurs, the recipient shall agree in writing not to transfer title or otherwise dispose of the supply within twelve (12) months without prior approval of the Chief Executive Officer.

(3) The Chief Executive Officer may transfer excess or surplus supplies valued less than $100 to charitable organizations, or a value prescribed by law or regulation, provided the supplies will be used exclusively by the organization.

Section 8-200 – General Provisions

§8-201 Disposition of Surplus Supplies.

Surplus supplies shall be offered through competitive sealed bids, public auction, or posted prices. It is recognized, however, that some types and classes of items can be sold or disposed of more readily and advantageously by other means, including barter. In such cases, and also where the nature of the supply or unusual circumstances call for its sale to be restricted or controlled, the Chief Executive Officer may employ such other means, including appraisal, provided such officer makes a written determination that such procedure is advantageous to the Authority. Only United States Postal Money Orders, certified checks, or cashier's checks shall be accepted for sales of surplus property except cash or a personal check may be accepted for petty cash sales of less than $100.

§8-202 Sales by Competitive Sealed Bidding.

(1) Solicitation and Opening. When making sales by competitive sealed bidding, notice of the sale should be given at least 10 days before the date set for opening bids. Notice shall be given by mailing a Request for Sale Bids to prospective bidders, including those bidders on lists maintained for this purpose, and by making the Request for Sale Bids publicly available. Newspaper advertisement may also be used, but is not required. The Request for Sale Bids shall list the supplies offered for sale; designate their location and how they may be inspected; and state the terms and conditions of sale and instructions to bidders including the place, date, and time set for bid opening. Bids shall be opened publicly.

(2) Award. Award shall be made in accordance with the provisions of the Request for Sale Bids to the highest responsive and responsible bidder, provided that the price offered by such bidder is acceptable. Where such price is not acceptable, bids may be rejected in whole or in part and the sale negotiated, provided the negotiated sale price is higher than the highest responsive and responsible bidder's price, or bids may be resolicited.

§8-203 Auctions.

Supplies may be sold at auction, electronic or otherwise. When appropriate, an experienced auctioneer should be used to cry or post the sale and assist in the sale. The solicitation to bidders should stipulate, at a minimum, all the terms and conditions of any sale; that a deposit may be required in order to participate in the bidding; that the purchaser must remove within a stated time all surplus supplies purchased; and that the Authority retains the right to reject any and all bids.
§8-204  **Posted Prices.**

Surplus supplies may be sold at posted prices as determined by the Contracting Officer when such prices are based on fair market value and the sale is conducted pursuant to written procedures established by the Procurement Department.

§8-205  **Trade-In.**

Surplus supplies may be traded-in only when the Contracting Officer determines that the trade-in value is expected to exceed the value estimated to be obtained through the sale or other disposition of such supplies.

§8-206  **Transfer, Sell, Trade-in or Disposal of Supplies Purchased with Grant Funds.**

(1) Where grant funds of any kind are used to purchase supplies, any transfer, sell, trade-in or disposal activities used by the Authority shall conform to any or all grant provisions.

(2) Where federal grant funds are used, the requirements specified below shall, also, apply:

(a) FTA Circular C 4220.1F (general principles applicable to all contracts involving federal funds or federally funded assets);

(b) FTA Master Grant Agreement MA(12), Section 19.g, “Disposition of Project Property”;


(d) FTA Circular C 5010.1C, “Grant Management Guidelines”, Chapter II-2c, “Real Property – Disposition”; Chapter III-4, “Program Income”; and

(e) 49 U.S.C. 5334(g), “Transfer of Assets No Longer Needed”.
CHAPTER 9 – ADMINISTRATIVE REMEDIES AND APPEALS

Section 9-100 – General Provisions

§9-101 Definitions.

For purposes of this Section, the following definitions will apply:

(a) Adverse decision” means “an administrative decision made by a contracting officer that is adverse to an individual or contractor. The term includes a denial of equitable relief by the Authority or the failure of the Authority to issue a decision or otherwise act on the request or right of the individual or contractor.

(b) “Appellee” means any interested or aggrieved party who appeals the decision of the Authority on a protest, suspension, debarment, claim or dispute.

(c) “Contract Claim” means any written demand for money, for property, damages or enforcement relating to or involving an alleged breach of contract arising under a valid contract once the Contracting Officer makes a final decision.

(d) “Contract Dispute” means any written disagreement relating to or involving an alleged breach of contract including the interpretation of a term or provision arising under a valid contract once the Contracting Officer makes a final decision.

(e) "Contracting Officer" denotes the person with such authority whether that is the Contracting Officer or a designee of such officer.

(f) "Interested Party" means an actual or prospective bidder, offeror, or contractor that may be aggrieved by the solicitation or a prospective or actual award of a contract or by the protest.

(g) "Protest" means a claim that there has been a violation of law or these regulations or some other impropriety in connection with Authority procurement.

§9-102 Scope of Coverage.

(1) This Chapter provides for administrative remedies for protests against solicitations, awards, suspensions, debarments, and contractual claims or disputes. These remedies are intended to foster public confidence in the integrity of the Authority’s procurement system and provide for fair and impartial resolution of controversies in an expeditious and cost-efficient manner. Contracts not subject to Invitation for Bids (including micro-purchases and minor contracts), Requests for Proposals or contracts awarded pursuant to an emergency declaration or other emergency procedure are not subject to this Section.

(2) The provisions of this Chapter shall apply and be incorporated into every procurement or contract made by the Authority.
(3) Any final decision or determination under this Chapter shall be reviewed at each level by the Legal Department for legal sufficiency prior to its execution.

(4) Time Computation. Saturdays, Sundays, or Federal or State of Florida holidays shall be excluded in the computation of the time periods provided by this Chapter.

9-103 Administrative Remedy Provision.

All solicitations for the Authority shall contain a provision that requires interested parties to exhaust its administrative remedies under this Chapter 9 of the Authority’s Administrative Remedies and Appeals, prior to seeking judicial relief of any type in connection with any matter related to the Authority’s solicitation or award of any contract, suspension, debarment, and any claim or dispute under any resulting contract.

Section 9-200 – Protests of Solicitation and Awards

§9-201 Right to Protest.

Any interested party who is aggrieved or adversely affected in connection with the solicitation or award of a contract or rejection of all offers may protest to the Authority and appeal any adverse decision in accordance with the provisions of this Chapter. Prior to filing a protest, interested parties are encouraged to seek resolution of their complaint initially with the Contracting Officer who issued the solicitation, however this will not waive the deadline and filing requirements.

§9-202 Administrative Remedies.

Administrative Remedies. This process is considered to be an administrative remedy and all actual or prospective bidders, offerors, and proposers agree to exhaust their administrative remedies under the Authority policies prior to seeking judicial relief of any type in connection with any matter related to the solicitation or award of any contract.

§9-203 Contact with Authority Staff and Officers.

Any interested party such as an actual or prospective bidder, offeror, proposer or its subcontractors at any tier and those acting on behalf of an interested party, are prohibited from directly contacting any Public Officer, agent or employee, other than the designated staff member, to discuss any matter relating in any way to the solicitation being protested or appealed. This prohibition begins with the issuance of the solicitation through the execution of a contract, purchase order or cancellation of the solicitation. Failure to adhere to this restriction may result in the protest or appeal being rejected or denied by the Authority without further consideration.

§9-204 Limitation of Damages.

In the event of a court upholding the protesting party’s claim, the court awarded damages on behalf of the protesting party shall be solely limited to the bid or proposal preparation costs and reimbursement of the amount of the protest bond as stipulated herein.
§9-205  Filing of Protest.

(1)  General. Any interested party affected in connection with a solicitation, award of contract or rejection of all offers may submit a written Notice of Intent to Protest and a Formal Written Protest.

(2)  Timeline for Notice of Intent to Protest.

   (a)  Protest of Solicitation. With respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provisions governing the methods for ranking bids, proposals, or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the Notice of Intent to Protest shall be filed in writing within seventy-two (72) hours after the posting of the solicitation.

   (b)  Failure to submit a Notice of Intent to Protest. Failure to submit the Notice of Intent to Protest within seventy-two (72) hours of the terms, conditions, and specifications of a solicitation and who continues to participate in the solicitation process, will be deemed to have waived any rights to protest the terms, conditions, or specifications of that solicitation.

   (c)  Protest of Award of Contract or Rejection of All Offers. Any person who is adversely affected by the Authority’s decision or intended decision to award a contract or reject all offers shall file a Notice of Intent to Protest in writing within seventy-two (72) hours after the posting of the notice of decision or intended decision. Failure to submit the Notice of Intent to Protest within seventy-two (72) hours will result in the protest being rejected by the Authority without further consideration.

   (d)  Notice Requirements. The Notice of Intent to Protest shall include at a minimum:

      (i)  the Notice of Intent to Protest shall be titled “Notice of Intent to Protest”;

      (ii) name and address of the protester;

      (iii) identification of the procurement or contract;

      (iv) name of the attorney and firm representing protestor, if applicable; and

      (v)  reasons for the protest.

   (e)  Timeline for Formal Written Protest. The formal written protest shall be filed within seven (7) days after the date the Notice of Intent to Protest is timely filed. Failure to submit the Formal Written Protest within seven (7) days will result in the protest being rejected by the Authority without further consideration.

   (f)  Written Protest Requirements. The Formal Written Protest shall include at a minimum:

      (i)  the Formal Written Protest shall be titled “Formal Written Protest”;
(ii) name and address of the protester;

(iii) name of the attorney and firm representing protestor, if applicable;

(iv) identification of the solicitation;

(v) reason(s) for the protest;

(vi) requested relief;

(vii) the Protest must demonstrate how the protestor has been aggrieved as a result of the Authority’s decision and shall include the facts, argument(s), and the law upon which the protest is made;

(viii) documents to substantiate the basis or ground for the protest; and

(ix) the required Protest Bond.

(3)  No further consideration. Any documents, basis or ground(s) for a protest not set forth or provided in the formal written protest required under this provision shall be deemed waived.

(4)  Protest Bond. Any person who files a protest of a solicitation, award of contract or rejection of all offers pursuant to this section shall post with the Authority, at the time of filing a Formal Written Protest, a bond payable to the Authority in the following amounts:

(a) for a protest of a solicitation, the bond shall be $5,000; and

(b) for a protest of an award of contract or rejection of all offers, the bond shall be equal to one (1) percent of the lowest offer submitted or $10,000, whichever is less. If there is no offer submitted, the bond amount shall be $10,000.

(5)  Condition of Bond. The bond required by this subsection shall be conditioned upon the payment of all costs which may be adjudged against the person filing the protest in the court which the action is brought and any subsequent appellate court proceeding. If, after completion of the court process and any appellate court proceedings, the Authority prevails, it shall recover all costs and charges which shall be included in the final order or judgment, including reasonable attorney fees. Upon payment of such costs and charges by the person filing the protest, the bond shall be returned to him or her. If the person filing the protest prevails, the bond shall be returned to him or her. The entire amount of the bond shall be forfeited if a court determines that a protest was filed for a frivolous or improper purpose, including, but not limited to, the purpose of harassing, causing unnecessary delay, or causing needless cost for the department or parties.

(6)  Failure to Submit a Protest Bond. Failure to submit a protest bond with a Formal Written Protest will result in the protest being rejected by the Chief Executive Officer (CEO) or CEO’s designee without further consideration by the Authority.

(7)  Time Computation. Saturdays, Sundays, or Federal or State of Florida holidays shall be excluded in the computation of the time periods provided by this section.
(8) **Delivery.** Notice of Intent to Protest, Formal Written Protests, and Protest Bond shall be sent via hand delivery or certified mail. **Electronic forms of delivery are not an acceptable means of delivery.** The protestor is solely responsible for verifying that the written protest was received in a timely manner. Written protests should be addressed to:

Hillsborough Transit Authority  
Attention: Chief Executive Officer  
1201 East 7th Avenue  
Tampa, Florida 33605

§9-206 **Stay of Procurement.**

Stay. Upon receipt of a timely filed Formal Written Protest and Protest Bond, the Authority shall not proceed further with the solicitation or contract award process until the protest is resolved by final Authority action, unless the Chief Executive Officer (CEO) sets forth in writing particular facts and circumstances which require the continuance of the solicitation or contract award process without delay necessary to protect substantial interests of the Authority.

§9-207 **Resolution of Protest.**

(1) **Review of Protest.** The CEO or CEO’s designee shall review all information and documents provided by the protestor including the procurement file to make a determination on the protest.

(2) **Hearing or Opportunity to be heard.** The CEO or CEO’s designee shall provide the protestor an opportunity to be heard on the issues stated in the protest.

(3) **Written Determination.** After the hearing on the protest and review of all evidence, the CEO or CEO designee shall provide a written decision to the protestor if the matter is not mutually resolved. The CEO or CEO designee shall take as much time as necessary to review the protest and make a written determination. The CEO or CEO’s designee decision shall be final and conclusive unless within five (5) days of receipt of the written decision, the protesting party delivers a formal written appeal to the CEO.

§9-208 **Appeal to Board of Directors or Appeals Board.**

(1) **Timeline for Filing a Notice of Appeal.** The protestor may appeal a denial by the CEO or CEO’s designee to the Board of Directors or an Appeals Committee Appointed by the Board (hereinafter “Appeals Committee”). A Notice of Appeal shall be filed within seventy-two (72) hours of the receipt of the decision by the CEO or CEO’s designee.

(2) **Notice Requirements.** The Notice of Appeal shall include at a minimum:

(a) the Notice shall be titled “Notice of Appeal”;

(b) name and address of the protestor;
(c) name of attorney and firm representing appellee;

(d) identification of the solicitation; and

(e) reason(s) for the protest.

(3) **Timeline for Formal Written Appeal.** The Formal Written Appeal shall be filed within five (5) business days from the receipt of the timely filed Notice of Appeal.

(4) **Formal Written Appeal Requirements.** The Formal Written Appeal shall include at a minimum:

(a) the written appeal shall be titled “Formal Written Appeal”;

(b) name and address of the protestor hereinafter “appellee”;

(c) name of the attorney and firm representing appellee, if any;

(d) identification of the solicitation;

(e) reason(s) for the appeal;

(f) requested relief; and

(g) the Appeal must demonstrate how the appellee has been aggrieved as a result of the Authority’s decision of denial of the protest and shall include the facts, argument(s), and the law upon which the appeal is made.

(5) **Failure to Timely File a Notice of Appeal or Formal Written Appeal.** Failure to submit the Notice of Appeal or Formal Written Appeal timely will result in the protest and appeal being rejected by the Authority without further consideration.

(6) **Delivery.** Written appeals shall be sent via hand delivery or certified mail. **Electronic forms of delivery are not an acceptable means of delivery.** The appellee or party appealing the decision is solely responsible for verifying that the written appeal was received in a timely manner. Written appeals should be addressed to:

Hillsborough Transit Authority  
Attention: Chief Executive Officer  
1201 East 7th Avenue  
Tampa, Florida 33605

(7) **Proceeding before the Board or Appeals Committee.**

(a) **Notice of Proceeding.** The CEO or the CEO’s designee will notify the appellee of the proceeding date and whether the matter will be held before the Board or Board Appeals Committee.
(b) **Review of the Appeal.** The Board will review and render a decision and determination on the Appeal or the Board may refer the appeal to a Board Appeals Committee for review and recommendation. The Board Appeals Committee shall consist of three (3) Board Members and a non-voting member appointed by the CEO. The Board or Appeals Committee shall review the notice of appeal and all materials provided.

(c) **Opportunity to be Heard.** The Board or the Appeals Committee shall also provide the appellee or party making the appeal an opportunity to be heard prior to rendering a decision. The Head of the Procurement Division or a designee shall also be given an opportunity to be heard. The Board or the Appeals Committee shall review all information and documents including the Formal Written Protest. No additional grounds shall be considered that were not made at the time of the Formal Protest.

(d) **Decision on the Appeal.** The Board shall render a decision and determination on the appeal of the denial of the protest. The decision and determination of the Board of Directors regarding the appeal of the denial of the protest shall be final. The Appeals Committee shall make a recommendation of decision and determination to the Board of Directors. The Board of Directors decision on the recommendation of the Appeals Committee shall be final. The appellee and any bidder, offeror or proposer who is afforded the opportunity to participate in the protest proceeding shall be bound by the Board’s decision and determination and may not protest or appeal that decision. The appellee shall be given a written notice of the decision and determination by the Board within five (5) business days of decision and determination.

(e) **Withdrawal of Protest and Appeal:** At any time during the protest or appeal process, the protester or appellee may withdraw its protest and Appeal.

§9-209  **Protest Involving Federal Funds.**

(1) **Solicitation Requirement.** For Federal Transit Administration (FTA) assisted procurements, the Authority shall include solicitation language notifying prospective offerors of the FTA’s protest procedures.

(2) **Notice.** In addition to the requirements above, if the solicitation or award of contract involves the use of federal funds, the Authority shall notify the Federal Transit Administration (FTA) when it receives protests that apply to FTA Circular 4220.1F, and keep FTA informed about the status of the protest.

(3) **Additional Notice.** If the Authority denies a protest, and especially if an appeal to FTA is likely to occur, the Authority shall inform the FTA Regional Administrator or the Associate Administrator for the program office administering a headquarters project directly, and if an FTA project manager is involved, keep the Project Manager informed about protests with which it is involved.

(4) **Notice of FTA Protest Procedure.** For FTA assisted procurements, the Authority shall include solicitation language notifying prospective offerors of the FTA’s protest procedures.
Section 9-300 – Debarment or Suspension

§9-301 Authority to Debar or Suspend.

(1) Authority to Debar. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Head of the Procurement Department shall have authority to debar a person for cause from consideration for award of contracts. Authority to Suspend. The Head of the Procurement Department shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three (3) years.

(2) Causes for Debarment or Suspension. The causes for debarment or suspension include the following:

(a) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(b) conviction under State or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor;

(c) conviction under State or federal antitrust statutes arising out of the submission of bids or proposals,

(d) violation of contract provisions, as set forth below, of a character which is regarded by the Head of the Procurement Department to be so serious as to justify debarment action:

   (i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

   (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

(e) any other cause the Head of the Procurement Department determines to be so serious and compelling as to affect responsibility as a contractor, including debarment by another governmental entity for any cause listed in regulations including but not limited to, the System for Award Management (SAM); and

(f) for violation of the ethical standards set forth in the Code of Ethics under Florida Statutes Chapter 112.

(g) HART shall ensure that all prospective vendor are in compliance with Florida Statutes Sections 287.133; 287.134; 287.135
§9-302  **Suspension.**

(1) **Recommendation by the Contracting Officer.** The Contracting Officer shall recommend suspension or debarment to the Head of the Procurement Department for determination. The Contracting Officer shall make a written recommendation that probable cause exists for debarment or suspension.

(2) **Authority to debar or suspend.** After receipt of the recommendation from the Contracting Officer, after notice to the contractor or prospective contractor and reasonable opportunity to be heard, the Head of the Procurement Department shall have the authority to debar or suspend a person for cause from consideration for award of contracts and shall issue a written determination.

(3) **Probable Cause Determination.** After notice and an opportunity to be heard and upon written determination by the Head of the Procurement Department that probable cause exists for debarment as set forth in this Section, a contractor or prospective contractor shall be suspended.

(4) **Notice of Suspension.** A notice of suspension, including a copy of such determination, shall be sent to the suspended contractor or prospective contractor. Such notice shall state that:

   (a) the suspension is for the period it takes to complete an investigation into possible debarment including any appeals of a debarment decision but not for a period in excess of three (3) years;

   (b) bids or proposals will not be solicited from the suspended person, and, if they are received, they will not be considered during the period of suspension; and

   (c) if a hearing has not been held, the suspended person may request a hearing in accordance with these regulations.

(5) **Suspension Period.** A contractor or prospective contractor is suspended upon issuance of the notice of suspension. The suspension shall remain in effect during any appeals. The suspension may be ended by the CEO or CEO’s designee or the Board of Directors of the Authority but, otherwise, shall only be ended when the suspension has been in effect for three (3) years or a debarment decision takes effect.

§9-303  **Initiation of Debarment Action.**

**Notice.** Written notice of the proposed debarment action shall be sent by certified mail, return receipt requested, to the contractor or prospective contractor. This notice shall:

   (a) state that debarment is being considered;

   (b) set forth the reasons for the action;

   (c) state that, if the contractor or prospective contractor so requests, a hearing will be held, provided such request is received by the CEO or CEO’s designee within five (5) days after the contractor or prospective contractor receives notice of the proposed action;
and

(d) state that the contractor or prospective contractor may be represented by counsel.

§9-304 Request for Hearing on the Proposed Debarment Action.

(1) Request for hearing. A contractor or prospective contractor that has been notified of a proposed debarment action may request in writing that a hearing be held. Such request must be received by the CEO or CEO designee within five (5) days of receipt of notice of the proposed action. If no request is received within the five-day period, a final determination may be made as set forth in Section 9-308 (Effect of Debarment Decision).

(2) Time Computation. Saturdays, Sundays, or federal or State of Florida holidays shall be excluded in the computation of the time periods provided by this section.

§9-305 Notice of Hearing on the Proposed Debarment Action.

If a hearing is requested, the Head of the Procurement Department shall conduct the hearing and make a final decision. The Head of the Procurement Department shall send a written notice of the time and place of the hearing. Such notice shall be sent by certified mail, return receipt requested, and shall state the purpose of the proceedings.

§9-306 Hearings on Proposed Debarment Action.

(1) Informal Hearing. Hearings shall be as informal as may be reasonable and appropriate under the circumstances and in accordance with applicable due process requirements. The Authority may be represented in hearings by legal counsel. The weight to be attached to evidence presented in any particular form will be within the discretion of the hearing official. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The hearing official may require evidence in addition to that offered by the parties.

(2) Hearing Record. A hearing may be recorded but need not be transcribed except at the request and expense of the person making such request. A record of those present, identification of any written evidence presented, copies of all written statements, and a summary of the hearing shall be sufficient record.

§9-307 Debarment Decision.

The Head of the Procurement Department shall prepare a written determination and decision. Such determination and decision shall be sent to the contractor or prospective contractor. When debarment is ordered, the written determination shall state the length of the debarment, the reasons for such action and to what extent affiliates are affected.

§9-308 Effect of Debarment Decision.

(1) Effect of the Decision. A debarment decision will take effect upon issuance and receipt by the contractor or prospective contractor. After the debarment decision takes effect, the
contractor shall remain debarred until a court, the Board of Directors, or the CEO or CEO designee’s orders otherwise or until the debarment period specified in the decision expires.

(2) **Finality of Decision to Suspend or Debar.** The decision to suspend or debar by the Head of the Procurement Department shall be final and conclusive unless an appeal of the decision is filed within five (5) days of receipt to the CEO.

§9-309 **Appeal of Suspension or Debarment Decision.**

(1) **Suspension or Debarment Appeals.** A contractor may appeal administratively any suspension or debarment decision to the CEO within five (5) days after receipt of the decision to debar or suspend.

(2) **Failure to Submit an Appeal.** Failure to submit the Formal Written Appeal timely will result in the appeal of the Suspension or Debarment being rejected by the Authority without further consideration.

(3) **Delivery.** Written appeals shall be sent via hand delivery or certified mail. **Electronic forms of delivery are not an acceptable means of delivery.** The party appealing the decision is solely responsible for verifying that the written appeal was received in a timely manner. Written appeals should be addressed to:

Hillsborough Transit Authority  
Attention: Chief Executive Officer  
1201 East 7th Avenue  
Tampa, Florida 33605

(4) **Appeal Requirements.** The Appeal of the denial of the decision to debar or suspend shall contain:

(a) an affirmative statement that the document is an “Appeal of Decision to Debar or Appeal of Decision to Suspend”;

(b) name and address of the contractor or prospective contractor appealing the decision to suspend or debar hereinafter “appellee”;

(c) name of the attorney or firm representing appellee, if applicable;

(d) identification of the procurement or contract;

(e) reasons for the appeal;

(f) documents to substantiate the basis or ground for the appeal; and

(g) the Appeal must demonstrate how the appellee has been aggrieved as a result of the Authority’s decision of the suspension or debarment and shall include the facts, argument(s), and the law upon which the appeal is made.
(5) *No Additional Consideration after Deadline.* Any documents, basis or ground for an appeal not set forth or provided in the appeal required under this provision shall be deemed waived.

(6) *Hearing or Opportunity to be heard.* The CEO or CEO’s designee shall provide the appellee an opportunity to be heard on the issues stated in the appeal.

(7) *Decision.* The CEO or CEO’s designee shall issue a written decision to debar or suspend. The decision shall:

(a) state the reasons for the action taken; and

(b) inform the debarred or suspended person involved of its rights to administrative review as provided in this Article.

(8) *Notice of Decision.* A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.

(9) *Finality of Decision.* A decision by the CEO or CEO’s designee to debar or suspend shall be final and conclusive, unless the contractor or prospective contractor files an written appeal to the Board within five (5) days of the decision by the CEO or CEO’s designee.

(10) *Appeal to Board Requirements.* The Appeal to the Board of the CEO or CEO designee’s decision to debar or suspend shall contain:

(a) an affirmative statement that the document is an “Appeal to Board of the decision to Debar by the CEO or CEO’s designee or Appeal to the Board of the CEO or CEO designee’s decision to Suspend”;

(b) name and address of the contractor or prospective contractor appealing the decision to suspend or debar hereinafter “appellee”;

(c) name of the attorney or firm representing appellee, if applicable;

(d) identification of the procurement or contract;

(e) reasons for the appeal; and

(f) Legal basis and argument for the appeal of the decision of the CEO or CEO’s designee to debar or suspend.

(11) *Failure to Submit Appeal to Board.* Failure to submit the Appeal to the Board of Directors timely will result in the appeal to Board of the Suspension or Debarment being rejected by the Authority without further consideration.

(12) *Delivery.* Written appeals shall be sent via hand delivery or certified mail. **Electronic forms of delivery are not an acceptable means of delivery.** The party appealing the decision is solely responsible for verifying that the written appeal was received in a timely manner. Written
appeals should be addressed to:

Hillsborough Transit Authority
Attention: Chief Executive Officer
1201 East 7th Avenue
Tampa, Florida 33605

(13) Hearing or Opportunity to be heard. The Board of Directors shall provide the appellee and the Authority with notice of hearing and an opportunity to be heard on the issues stated in the appeal.

(14) Decision. Upon providing the parties with an opportunity to be heard on the appeal, the Board of Directors shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken.

(15) Notice of Decision. A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.

(16) Finality of Decision. A decision by the Board of Directors to debar or suspend shall be final and conclusive, unless the contractor or prospective contractor files a court action pursuant to Section 9-700.

Section 9-400 Contract Claims and Disputes

§9-401 Resolution of Contract Claims and Disputes.

(1) Claims and Disputes Authority to Resolve. All claims or disputes by a Contractor against the Authority relating to a contract shall be submitted in writing to the designated Contracting Officer of the Procurement Department for a determination.

(2) Definition. Claims and disputes include controversies arising under a Contract and those based upon breach of contract, mistake, misrepresentation or other cause of contract modification, termination or rescission.

(3) Notice of Claim or Dispute. The Contractor shall submit a Notice of Claim or Dispute in writing within ten (10) days of issue giving rise to claim or dispute. The date of the issue shall include when the contractor knew of the issue or should have known of the issue that gave rise to the claim or dispute.

(4) Notice Requirements. The Notice of Claim or Dispute shall include at a minimum:

(a) the Notice of Claim or Dispute shall be titled “Notice of Contract Claim or Notice of Contract Dispute”;

(b) name and address of the contractor;

(c) name of the attorney and firm representing contractor, if applicable;
(d) identification of the contract; and

(e) Reasons for the claim or dispute.

(5) Failure to timely submit Notice. Failure to submit the Notice of Claim or Dispute within ten (10) days of the issue that gave rise to the dispute or claim will result in the claim or dispute being rejected by the Authority without further consideration. The date of the issue shall include when the contractor knew of the issue or should have known of the issue that gave rise to the claim or dispute.

(6) Delivery. A Notice of Claim or Dispute shall be sent via hand delivery or certified mail.

**Electronic forms of delivery are not an acceptable means of delivery.** The contractor is solely responsible for verifying that the Notice of Claim or Dispute was received in a timely manner. Notice of Claim or Dispute should be addressed to:

Hillsborough Transit Authority
Attention: Chief Executive Officer
1201 East 7th Avenue
Tampa, Florida 33605

(7) Timeline for Formal Written Claim or Dispute. The Formal Written Claim or Dispute shall be filed within seven (7) days after the date the Notice of Claim or Dispute is timely filed. Failure to submit the Formal Written Claim or Dispute within seven (7) days will result in the Claim or Dispute being rejected by the Authority without further consideration.

(8) Written Claim or Dispute Requirements. The Formal Written Claim or Dispute shall include at a minimum:

(a) the Formal Written Claim or Dispute shall be titled “Formal Written Contract Claim or Dispute”;

(b) name and address of the contractor;

(c) name of the attorney and firm representing contractor, if any;

(d) identification of the contract;

(e) reason(s) for the claim or dispute;

(f) requested relief;

(g) the claim or dispute must demonstrate how the contractor has been aggrieved as a result of the Authority’s decision and shall include the facts, argument(s), and the law upon which the claim or dispute is made;

(h) documents to substantiate the basis or ground for the claim or dispute.

(9) No further consideration. Any documents, basis or ground(s) for the claim or dispute not set forth or provided in the formal written contract claim or dispute required under this provision shall be deemed waived.
(10) **Written determination.** The Contracting Officer shall issue a decision in writing within ten (10) days of the hearing of Claim or Dispute and shall mail to the contractor. The decision shall state the reasons for the decision reached.

(11) **Administrative Remedies.** This process is considered to be an administrative remedy and all contractors agree to exhaust their administrative remedies under the Authority policies prior to seeking judicial relief of any type in connection with any matter related to the suspension or debarment.

§9-402 **Appeal of Contract Claims or Disputes.**

(1) **Appeal.** The Contracting Officer’s decision shall be final and conclusive unless within five (5) days of receipt of the decision the contractor delivers a written appeal to the CEO or CEO’s designee.

(2) **Requirements of the Appeal.** The Formal Written Appeal of the Claim or Dispute shall include at a minimum:

(a) the Formal Written Appeal shall be titled “Formal Written Appeal of the Contract Claim or Dispute”;

(b) name and address of the contractor;

(c) name of the attorney and firm representing contractor, if any;

(d) identification of the contract;

(e) reason(s) for the appeal;

(f) requested relief;

(g) the Appeal of the claim or dispute must demonstrate how the contractor has been aggrieved as a result of the Authority’s decision and shall include the facts, argument(s), and the law upon which the appeal is made; and

(h) documents to substantiate the basis or ground for the claim or dispute.

(3) **Delivery of Appeal.** Notice of Appeal of a Claim or Dispute under this Subsection shall be sent via hand delivery or certified mail. **Electronic forms of delivery are not an acceptable means of delivery.** The claimant is solely responsible for verifying that the written protest was received in a timely manner. Written protests should be addressed to:

Hillsborough Transit Authority  
Attention: Chief Executive Officer  
1201 East 7th Avenue  
Tampa, Florida 33605

(4) **Failure to submit a timely Appeal.** Failure to submit the Appeal within five (5) days of the receipt of the determination will result in the appeal being rejected by the Authority without further consideration.
(5) Review of Appeal. The CEO or CEO’s designee may review the Appeal or may refer to Binding Arbitration for review and determination of the decision by the Contracting Officer at CEO or CEO designee’s sole discretion.

(6) Opportunity to be Heard. The CEO, CEO’s designee or Arbitrator shall provide the appellee and Authority with an opportunity to be heard on the appeal.

(7) Arbitration. If the matter is referred to Binding Arbitration, the parties shall select a neutral arbitrator by agreement or striking from a selection panel. Both parties shall be given an opportunity to be heard. The Arbitrator shall render a written decision within thirty (30) days of the hearing. The prevailing party shall be entitled to all costs and fees associated with Arbitration. The decision of the Arbitrator shall be final.

(8) Administrative Remedies. This process is considered to be an administrative remedy and all contractors agrees to exhaust its administrative remedies under the Authority policies prior to seeking judicial relief of any type in connection with any matter related to the contract claim or contract dispute.

Section 9-500 Solicitations or Awards in Violation of Law

§9-501 Applicability of this Section.

The provisions of this Section 9-500 shall apply where it is determined administratively, or upon administrative or judicial review, that a solicitation or award of a contract is in violation of law.

§9-502 Remedies Prior to an Award.

If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:

(a) cancelled; or

(b) revised to comply with the law.

§9-503 Remedies After an Award.

If after an award it is determined that a solicitation or award of a contract is in violation of law, then:

(1) if the person awarded the contract has not acted fraudulently or in bad faith:

(a) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the Authority; or

(b) the contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, prior to the termination.
(2) if the person awarded the contract has acted fraudulently or in bad faith:

(a) the contract may be declared null and void; or

(b) the contract may be ratified and affirmed if such action is in the best interests of the Authority, without prejudice to the Authority's rights to such damages as may be appropriate.

Section 9-600 – Interest

§9-601 Interest.

Interest on amounts ultimately determined to be due to a contractor or the Authority in a court of law shall be payable at the statutory rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.

Section 9-700 – Access to Courts

§9-701 Access to Courts.

(1) Solicitation and Award of Contracts. The State Court in Hillsborough County, Florida shall have jurisdiction over an action between the Authority and a bidder, offeror, or contractor, prospective or actual, to determine whether a solicitation or award of a contract is in accordance with the Constitution, statutes, regulations, and the terms and conditions of the solicitation. The State Court in Hillsborough County, Florida shall have such jurisdiction, whether the actions are at law or in equity, and whether the actions are for monetary damages or for declaratory, injunctive, or other equitable relief.

(2) Debarment or Suspension. The State Court in Hillsborough County, Florida shall have jurisdiction over an action between the Authority and a person who is subject to a suspension or debarment proceeding, to determine whether the debarment or suspension is in accordance with the Constitution, statutes, and regulations. The State Court in Hillsborough County, Florida shall have such jurisdiction, whether the actions are at law or in equity, and whether the actions are for declaratory, injunctive, or other equitable relief.

(3) Actions Under Contracts or for Breach of Contract Claims and Disputes. The State Court in Hillsborough County, Florida shall have jurisdiction over an action between the Authority and a contractor, for any cause of action which arises under, or by virtue of, the contract, whether the action is at law or in equity, whether the action is on the contract or for a breach of the contract, and whether the action is for monetary damages or declaratory, injunctive, or other equitable relief.

(4) Limited Finality for Administrative Determinations. In any judicial action under this Section, factual or legal determinations by employees, agents, or other persons appointed by the Authority shall be final and remain in effect while on appeal unless stayed by a Court of competent jurisdiction, notwithstanding any contract provision or regulation to the contrary, except to the extent provided in this Section.

(5) Applicable Law. Florida law will apply to any and all actions under this Section.
Section 9-800 Time Limitations on Actions

§9-801 Applicability of Time Limitations.

1) Protested Solicitations and Awards. Any action under Section 9-700 (Access to Courts) shall be commenced within thirty (30) days after receipt of a final administrative decision pursuant to either Section 9-200, or shall be barred.

2) Debarments and Suspensions for Cause. Any action under Section 9-700 (Access to Courts) shall be commenced within thirty (30) days after receipt of the decision of the Board of Directors under Section 9-300 (Authority to Debar or Suspend, Decision), or the decision of the Ethics Commission under Section 12, if applicable

3) Actions under Contracts or for Breach of Contract. The statutory limitations on an action between private persons on a contract or for breach of contract shall apply to any action commenced pursuant to Section 9-700 (Access to Courts).
CHAPTER 10 – INTERGOVERNMENTAL RELATIONS

Section 10-100 – Cooperative Purchasing Authorized

§10-101 Definitions.

(1) “Cooperative Purchasing” means procurements conducted by, or on behalf of, multiple public entities.

(2) “Joint Procurement” (sometimes informally referred to as cooperative procurement) means a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services in a fixed quantity, even if expressed as a total minimum and total maximum. Unlike a State or local government purchasing schedule or contract where other public entities are “named” but their anticipated volume of business was not incorporated into a solicitation or contract prior to issuance or award, a joint procurement is not drafted for the purpose of accommodating the needs of other parties that may later choose to participate in the benefits of that contract, but is drafted to the benefit of specific parties. This type of cooperative purchasing is “preferred” and should be utilized by the Authority in all instances.

§10-102 Cooperative Purchasing and Joint Procurement Authorized.

(1) The Authority may participate in, sponsor, conduct, or administer a Cooperative Purchasing agreement or Joint Procurement for the procurement of any supplies, services, or construction with one or more public entities in accordance with an agreement entered into between the participants. Such Cooperative Purchasing or Joint Procurement may include, but is not limited to, joint or multi-party contracts between participating entities and open-ended contracts made available to participating parties.

(2) All Cooperative Purchasing and Joint Procurement conducted under this Chapter shall be through contracts awarded through full and open competition, including use of source selection methods substantially equivalent to those specified in Chapter 3 (Source Selection and Contract Formation) of this Manual.

(3) It may be economically advantageous for the Authority to enter into a joint procurement with others that have similar needs. The public entity responsible for undertaking the joint procurement may, upon contract award, assign to the other participants responsibilities for administering those parts of the contract affecting their property or services. Participation in a joint procurement, however, does not relieve the Authority from the requirements and responsibilities it would have if it were procuring the property or services itself, and does not relinquish responsibility for the actions of other participants merely because the primary administrative responsibility for a particular action resides in an entity other than itself.
Section 10-200 - Sale, Acquisition, or Use of Supplies by a Public Procurement Unit

§10-201 Sale, Acquisition, or Use of Supplies.

The Authority may sell to, acquire from, or use any supplies belonging to other public entities to the degree permitted by law or regulation, independent of the requirements of Chapter 3 (Source Selection and Contract Formation) and Chapter 8 (Supply Management).

§10-202 Cooperative Use of Supplies or Services.

The Authority may enter into an agreement as made permissible by law or regulation, independent of the requirements of Chapter 3 (Source Selection and Contract Formation) and Chapter 8 (Supply Management), with any other public entity for the cooperative use of supplies or services under the terms agreed upon between the parties.

§10-203 Joint Use of Facilities.

The Authority may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public entity under the terms agreed upon between the parties.

§10-204 Supply of Personnel, Information, and Technical Services.

(1) Supply of Personnel. The Authority is authorized, in its discretion, upon written request from another public entity to provide personnel support. The public entity making the request shall pay the direct and indirect cost of furnishing Authority personnel, in accordance with an agreement between the parties.

(2) Supply of Services. The informational, technical, and other services of the Authority may be made available to any other public entity. The requesting public entity shall pay for the expenses of the services so provided, in accordance with an agreement between the parties.

(3) Information Services. Upon request, the Authority may make available to other public entities the following services, among others:

(a) standard forms;

(b) printed manuals;

(c) product specifications and standards;

(d) quality assurance testing services and methods;

(e) qualified products lists;
(f) source information;

(g) common use commodities listings;

(h) supplier pre-qualification information;

(i) supplier performance ratings;

(j) debarred and suspended bidders lists;

(k) forms for Invitations for Bids, Requests for Proposals, Instructions to Bidders;

(l) General Contract Provisions, and other contract forms; and

(m) contracts or published summaries thereof, including price and time of delivery information.

(4) Technical Services. The Authority may provide the following technical services, among others:

(a) development of products specifications;

(b) development of quality assurance test methods, including receiving, inspection, and acceptance procedures;

(c) use of product testing and inspection facilities; and

(d) use of personnel training programs.

(5) Fees. The Chief Executive Officer may enter into contractual arrangements and publish a schedule of fees for the services provided under Subsections (3) and (4) of this Section.

§10-205 Supply of Personnel, Information, and Services.

Requests to the Authority by another public entity to provide or make available personnel, services, information, or technical services pursuant shall be complied with only to the extent that the Chief Executive Officer determines that it is practical to do so in terms of personnel, time, and other resources.

Section 10-300 – Contract Controversies

§10-301 Contract Controversies.

Cooperative Purchasing agreements and Joint Procurements conducted by the Authority shall include a provision that controversies arising between an ordering public entity and the contractor shall be resolved between these two parties (not the Authority).
CHAPTER 11 –DISADVANTAGED, BUSINESS ENTERPRISE PROGRAMS AND SMALL BUSINESS INITIATIVES

Section 11-100 – General.

§11-101 General Policy.

(1) It is the policy of the Authority that disadvantaged and small businesses have the opportunity to compete for and participate in the performance of contracts or in the purchase of supplies, services and construction procured by the Authority. In addition, contractors performing work for the Authority shall ensure that these business concerns have the opportunity to participate in the performance of contracts without discrimination on the basis of race, color, national origin or sex.

(2) Current programs developed to manage this policy include:

(a) United States Department of Transportation (USDOT) Funds: Disadvantaged Business Enterprise (DBE) Program, which includes Small Business Enterprise (SBE) participation; and

(b) Non-USDOT Funds: SBE Initiatives.

§11-102 Solicitation and Contract Clauses, Forms and Procedures.

The Chief Executive Officer shall develop solicitation and contract clauses, forms and procedures to appropriately educate businesses about the Authority’s programs, effectively collect all necessary program and compliance information, encourage participation in the Authority’s programs and report the Authority’s progress to the Board of Directors.

Section 11-200 –DOT Funds: Disadvantaged Business Enterprise Program (with SBE Participation)

§11-201 Application.


(2) Purchases made utilizing U.S. DOT funds must comply with 49 CFR Part 26 or applicable Authority policies and programs.

§11-202 Responsibility and Purpose.

The Chief Executive Officer shall develop and implement a DBE program, including a small business element that meets the requirements of 49 CFR Part 26.
§11-203 **Execution of USDOT Funds: DBE Program**

1. The Chief Executive Officer shall designate in writing a DBE Liaison Officer (DBELO) to implement all aspects of the Authority’s USDOT DBE program.

2. The DBELO shall have direct, independent access to the Chief Executive Officer concerning all DBE program matters and shall work closely with Procurement and project management staff who shall assist in the administration of these programs.

3. The DBELO shall develop written procedures to implement these programs and deliver adequate training to Authority personnel, vendors and others who participate in the program. These procedures shall include removing barriers that impede DBEs from participating in Authority procurements and effective monitoring of prime contractors who have committed to subcontracting work to DBEs.

§11-204 **Objectives.**

The objectives of this program shall be to:

(a) ensure nondiscrimination in the award and administration of USDOT-assisted contracts;

(b) create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;

(c) ensure that the Authority DBE program is narrowly tailored in accordance with applicable law;

(d) ensure that only firms that fully comply with 49 CFR part 26 eligibility standards are permitted to participate as DBEs;

(e) help remove barriers to the participation of DBEs in USDOT-assisted contracts; and

(f) assist the development of firms that can successfully compete in the marketplace outside the DBE program.

**Section 11-300 – Non USDOT Funds: SBE Initiatives**

§11-301 **Application.**

This Section applies the Authority’s non USDOT funded contracts.

§11-302 **Execution of Local SBE, WBE and MBE Programs.**

1. The Chief Executive Officer shall designate in writing a SBE Liaison Officer (SBELO) to implement all aspects of the Authority’s local SBE initiatives.
(2) The SBELO shall have direct, independent access to the Chief Executive Officer concerning all SBE matters and shall work closely with Procurement and project management staff who shall assist in the administration of these initiatives.

(3) The SBELO shall develop written procedures to implement these initiatives and deliver adequate training to Authority personnel, vendors and others who participate in them. These procedures shall align with the objectives in §-11-304.

§11-303 Responsibility.

The Chief Executive Officer shall develop and implement local DBE and SBE initiatives that fully meet the requirements of applicable laws or regulations.

§11-304 Objectives.

The objective of these initiatives shall be to:

(a) create a level playing field on which small businesses can compete fairly for locally funded contracts, both at a prime and subcontractor level;

(b) expand opportunities for small businesses to participate in non-USDOT funded procurements;

(c) remove any barriers that may exist to the participation of small businesses in the Authority’s non USDOT-funded contracts;

(d) assist the development of firms that can successfully compete in the marketplace;

(e) align the Authority with its customers, enhancing the Authority’s ability to better meet their needs; and

(f) increase the Authority’s options when purchasing products and capabilities in a competitive marketplace.

§11-305 Procedures.

(1) Until such time as the Authority can complete the required availability/disparity study to determine if goal-based SBE minority based enterprise (MBE) or woman-owned business enterprise (WBE) programs are legally supportable, the Procurement Department shall require in its solicitations that prime contractors identify all subcontractors to be used in the performance of a contract and identify whether the subcontractors are DBEs, SBEs, WBEs or MBES.

(2) Subcontractor information shall be used in part to support the study and to set parameters around the development of any resulting goal-based DBE, SBE, WBE or MBE program.

(3) Until such time as the study can be completed, solicitation provisions shall encourage
prime contractors to utilize DBEs, SBEs, WBEs and MBEs in their subcontracting practices. Whether a prospective contractor submits the required documentation shall be considered a matter of the prospective contractor’s responsiveness. Prospective contractors who do not comply with the Authority’s solicitation requirements may be considered to be not responsible.

(4) The Authority shall publish on its public website a list of where prospective contractors may locate potential DBE, SBE, WBE or MBE subcontractors.

(5) The Authority shall not engage in procurement practices that may specifically limit the ability of DBEs, SBEs, WBEs or MBEs to participate in the Authority’s procurement system. Where practical, procurements shall be structured to encourage DBE, SBE, WBE or MBE participation including, specifications and statements of work that are not limiting to them and unbundling large procurements where practical. Further, the Authority shall make reasonable efforts to ensure SBEs, DBEs, WBEs and MBEs are aware of the Authority’s upcoming procurement opportunities, including participation of Authority personnel in SBE, DBE, WBE and MBE-focused community outreach programs.
CHAPTER 12 – CONFLICTS OF INTEREST

§12-101

Section 12-100 – General Provisions Prohibited Situations.

(1) No employee, officer, Board Member or agent of the Authority shall participate in the selection, or in the award or administration of a contract, if a conflict of interest, real or apparent, would be involved. No employee, officer or agent of the Authority or members of their families shall benefit directly or indirectly from the sale, disposition, leasing or acquisition of the Authority property. A conflict of interest would arise when:

(a) employee, officer, Board Member or agent of the Authority,

(b) any member of their immediate family, (parent, spouse, child, or sibling, or any other natural person having the same legal residence as the employee, officer, Board Member or agent),

(c) his or her partner, an organization that employs or is about to employ any of the above, or

(d) any other person, business or organization with whom the employee, officer, Board Member or agent or any member of their immediate family is negotiating or has an arrangement concerning prospective employment is involved in the sale, disposition, lease or acquisition, or has a financial or other interest pertaining to an award, or the sale or leasing of, or acquisition or disposition of the Authority property.

(e) an employee, officer, Board Member, or agent of an organization that employs, or is about to employ any of the above has a financial or other interest in the firm selected for award.

(2) An exception to the foregoing is when an employee, members of his family, an officer, Board Member or agent of the Authority can bid on used office equipment or vehicles past life-span when submitting bids according to competitive bid process, provided he adheres to the following underlying principles or guidelines:

(a) preventing the existence of conflicting roles that might bias the Authority's judgment;

(b) preventing unfair competitive advantage; and

(c) not knowingly using confidential information for actual or anticipated gain.

(3) It is expressly prohibited that any employee, officer, Board Member, or agent of the Authority receive any personal benefit or profit from any contract or purchase made by the Authority.
§12-102 Gifts or Gratuities.

(1) All employees, officers, Board Members or agents involved with financial or procurement recommendations and/or decisions of the Authority are expected to impartially deal with vendors and the public in the best interest of the Authority; therefore, all employees, officers, Board Members or agents of the Authority involved with financial or procurement recommendations and/or decisions of the Authority shall not solicit and are prohibited from accepting gifts, gratuities, favors, or anything of monetary value from visitors, organizations, vendors, contractors, potential contractors, or parties to subcontracts. Records of vendors, contractors, potential contractors or parties to subcontracts are available in the Authority’s Procurement Department.

(2) The Authority’s employees, officers, Board Members or agents are also bound by Chapter 410.02 of the Authority’s Ethics and Code of Conduct, Chapter 112, Florida Statutes, Code of Ethics for Public Officer and Employees, and FTA Circular C 4220.1F.

§12-103 Organizational Conflicts of Interest.

The Authority shall take steps to prevent or mitigate organizational conflicts of interest that would result in conflicting roles that might bias a contractor’s judgment or would result in unfair competitive advantage. An organizational conflict of interest occurs when any of the following circumstances arise:

(a) Lack of Impartiality or Impaired Objectivity. When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances.

(b) Unequal Access to Information.

(i) The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.

(ii) The Authority’s employees, officers, Board Members or agents may not gain any personal and improper advantage, use nor furnish to anyone any information not available to the general public that was obtained as a result of association with the Authority.

(c) Biased Ground Rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

(d) Conflicts and Acquisition Planning. The Authority shall not issue a purchase order or execute a contract when a conflict of interest is evident. In addition, Procurement shall analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before issuing a purchase order or executing a contract award.
§12-104 State and Federal Rules – Conflicts of Interest Personal or Organizational.

(1) Nothing hereinabove stated is intended to conflict with any administrative rules of the State of Florida, in particular Commission on Ethics or the Department of Administration, nor any federal rules associated with conflicts of interest.

(2) In cases where the existence of a conflict is not clear, the matter will be referred to the Authority’s legal counsel and where appropriate, State Ethics Commission for a determination.

§12-105 Agency Contract Prohibition.

(1) The Authority shall not enter into any contract in which any employee, officer, Board Member or agent of the Authority has, during his tenure or for two-years thereafter, any material interest either direct or indirect.

(2) If any such present or former employee, officer, Board Member or agent of the Authority involuntarily acquires or had acquired prior to the beginning of his tenure any such interest and if such interest is immediately disclosed to the Authority, the Authority may waive this prohibition provided that any such present employee, officer, Board Member or agent shall not participate in any action by the Authority relating to such contract.

§12-106 Doing Business with the Authority.

No employee, officer, Board Member or agent, for a period of two (2) years after leaving the Authority’s employment, shall do business with the Authority.
ATTACHMENT A - DEFINITIONS

Definitions for key terms and acronyms used throughout this Manual are provided below unless the context in which they are used clearly requires a different meaning or a different definition is prescribed for a particular section or provision.

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(1) “Actual Costs” are all direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs only.

(2) “Adverse decision” means an administrative decision made by a Contracting Officer that is adverse to an individual or contractor. The term includes a denial of equitable relief by the Authority or the failure of the Authority to issue a decision or otherwise act on the request or right of the individual or contractor.

(3) “Appellee” means any interested or aggrieved party who appeals the decision of the Authority on a protest, suspension, debarment, claim or dispute.

(4) “Applicable Credits” are receipts or price reductions which offset or reduce expenditures allocable to contracts as direct or indirect costs. Examples include purchase discounts, rebates, allowances, recoveries or indemnification for losses, sale of scrap and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational or incidental services and food sales.

(5) “Architectural and Engineering Services” means:

(a) “professional services of an architectural or engineering nature”, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services;

(b) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
(c) incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including: studies, investigations, surveying, mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

(6) The “Authority” means Hillsborough Transit Authority, Hillsborough Area Regional Transit or HART.

(7) "Bid sample" means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.

(8) “Board of Directors” or “Board” means the governing body of the Authority.

(9) "Brand Name or Equal Specification" means a specification which uses one or more manufacturer's names or catalogue numbers to describe the salient characteristics (standard of quality, performance, etc.) needed to meet the Authority's requirements and which provides for the submission of equivalent products.

(10) “Brand Name Specification" means a specification limited to one or more items by manufacturers' names or catalogue numbers.

(11) “CEO” means the Chief Executive Officer.

(12) “Chief Executive Officer” means the highest level administrator within the Authority, also known as the “executive administrator” in Chapter 163.567(12), Florida Statutes.


(14) “Construction” means the process of building, altering, repairing, improving, or demolishing any public infrastructure facility, including any public structure, public building, or other public improvements of any kind to real property. It does not include the routine operation routine repair or routine maintenance of any existing public infrastructure facility, including structures, buildings, or real property.

(15) “Cooperative Purchasing” means procurements conducted by, or on behalf of, multiple public entities.

(16) “Cost Data” are information concerning the actual or estimated cost of labor, material, overhead, and other cost elements which have been actually incurred or which are expected to be incurred by the contractor in performing the contract.
(17) “Cost Objective” is any unit of work such as a function, an organizational subdivision, or a contract for which provision is made to accumulate and measure separately the cost of processes, products, jobs, capitalized projects, and similar items. A final cost objective is one that has allocated to it both direct and indirect costs and, in the contractor's accumulation system, is one of the final accumulation points.

(18) “Cost-Reimbursement Contract” means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Manual, and a fee, if any.

(19) “DBE” means a Disadvantaged Business Enterprise (see definition, below).

(20) "Descriptive literature" means information available in the ordinary course of business which shows the characteristics, construction, or operation of an item which enables the Authority to consider whether the item meets its needs.

(21) “Design-bid-build” means a project delivery method in which the Contracting Officer sequentially awards separate contracts, the first for architectural and engineering services to design the project and the second for construction of the project according to the design.

(22) “Design-build” means a project delivery method in which the Contracting Officer enters into a single contract for design and construction of an infrastructure facility.

(23) “Design-build-finance-operate-maintain” means a project delivery method in which the Contracting Officer enters into a single contract for design, construction, finance, maintenance, and operation of an infrastructure facility over a contractually defined period. No Authority funds are appropriated to pay for any part of the services provided by the contractor during the contract period.

(24) “Design-build-operate-maintain” means a project delivery method in which the Contracting Officer enters into a single contract for design, construction, maintenance, and operation of an infrastructure facility over a contractually defined period. All or a portion of the funds required to pay for the services provided by the contractor during the contract period are either appropriated by the Authority prior to award of the contract or secured by the Authority through fare, toll, or user charges.

(25) “Design requirements” means the written description of the infrastructure facility or service to be procured under this Article, including:

(a) required features, functions, characteristics, qualities, and properties that are required by the Authority;

(b) the anticipated schedule, including start, duration, and completion; and
(c) estimated budgets (as applicable to the specific procurement) for design, construction, operation and maintenance.

(26) “Design Specifications” means specifications based on the design of a product or service. Typical design specifications may include dimensions, materials used, commonly and competitively available components, and non-proprietary methods of manufacturing.

(27) “Disadvantaged Business Enterprise” means a for-profit small business concern —

(a) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(28) “Discussions”, as used in the source selection process, means an exchange of information or other manner of negotiation during which the offeror and the Authority may alter or otherwise change the conditions, terms, and price of the proposed contract. Discussions may be conducted in connection with competitive sealed proposals, sole source, and emergency procurement; discussions are not permissible in competitive sealed bidding (except to the extent permissible in the first phase of multi-step sealed bidding).

(29) “Established Catalogue Price” means the price included in a catalogue, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(30) "Excess Supplies" means any supplies, other than expendable supplies, which have a remaining useful life but which are no longer required by the Authority.

(31) “Expendable Supplies” means all tangible supplies other than nonexpendable supplies.

(32) “FDOT” means Florida Department of Transportation.

(33) “FTA” means the Federal Transit Administration.

(34) “Full and Open Competition” is a standard form of public procurement competition where all qualified or responsible offerors are eligible to compete.
(35)  “Infrastructure Facility” means a building; structure; or networks of buildings, structures, pipes, controls, and equipment that provide transportation, utilities, public education, or public safety services. Included are government office buildings; public schools; courthouses; jails; prisons; water treatment plants, distribution systems, and pumping stations; wastewater treatment plants, collection systems, and pumping stations; solid waste disposal plants, incinerators, landfills, and related facilities; public roads and streets; highways; public parking facilities; public transportation systems, terminals, and rolling stock; rail, air, and water port structures, terminals, and equipment.

(36)  "Insurance” is a contract whereby one undertakes to indemnify another or pay or allow a specified amount or a determinable benefit upon determinable contingencies.

(37)  “Insurer” includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance or of annuity.

(38)  "Interested Party" means an actual or prospective bidder, offeror, or contractor that may be aggrieved by the solicitation or a prospective or actual award of a contract or by the protest.

(39)  “Invitation for Bids” means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(40)  “Joint Procurement” (sometimes informally referred to as cooperative procurement) means a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services in a fixed quantity, even if expressed as a total minimum and total maximum. Unlike a State or local government purchasing schedule or contract where other public entities are “named” but their anticipated volume of business was not incorporated into a solicitation or contract prior to issuance or award, a joint procurement is not drafted for the purpose of accommodating the needs of other parties that may later choose to participate in the benefits of that contract, but is drafted to the benefit of specific parties.

(41)  “Low Tie Bids” are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the Invitation for Bids.


(43)  "Material interest” means direct or indirect ownership of more than 5 percent of the total assets or capital stock of any business entity. For the purposes of this act, indirect ownership does not include ownership by a spouse or minor child.

(44)  “May” denotes the permissive.

(45)  "Nonexpendable Supplies” means all tangible supplies having an original acquisition cost of over $100 per unit and a probable useful life of more than one year.
(46) “Offeror” means a bidder, proposer, business or individual that sends an offer to sell goods and services to the Authority.

(47) “Operations and “Maintenance” means a project delivery method whereby the Purchasing Agency enters into a single contract for the routine operation, routine repair, and routine maintenance of an infrastructure facility.

(48) “Organizational Conflict of Interest (OCOI)” means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Authority, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(49) “Performance Specifications” means specifications based on the function and performance of a product or service under specified conditions, preferably conditions that can be reproduced for testing purposes. They may include useful life, reliability in terms of average intervals between failure, and capacity.

(50) “Person” means any business, individual, union, committee, club, other organization, or group of individuals.

(51) “Personal Property” means property that is movable and not fixed to or associated with the land.

(52) “Price Analysis” is the evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

(53) “Pricing Data” are factual information concerning prices, including profit, for supplies, services, or construction substantially similar to those being procured. In this definition, "prices" refer to offered or proposed selling prices, historical selling prices, and current selling prices of such items. This definition refers to data relevant to both prime and subcontract prices.

(54) “Procurement” means buying, purchasing, renting, leasing, or otherwise acquiring any supplies services or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(55) “Procurement Department” means the functional area of the Authority responsible for conducting procurements and administering purchase orders and contracts, whether referred to organizationally as a “workgroup”, “section”, “department”, “division”, etc.

(56) “Property” means supplies.
"Protest" means a claim that there has been a violation of law or these regulations or some other impropriety in connection with Authority procurement.

"Purchase Description" means the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to, or made a part of the solicitation.

"Qualified Products List" means an approved list of property, services, or construction items described by model or catalogue numbers, which, prior to competitive solicitation, the Authority has determined will meet the applicable specification requirements.

"Real Property" means property that includes land and buildings, and anything affixed to the land.

"Request for Proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

"Responsible Bidder (or Offeror)" means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

"Responsive Bidder" means a person who has submitted a bid which conforms in all material respects to the Invitation for Bids.

"Salient Characteristics" means qualities of an item that are essential to ensure that the intended use of it can be satisfactorily realized and may set forth those salient physical, functional, or other characteristics of the referenced product that an equal product must have in order to meet the Authority's needs.

"Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

"Shall" denotes the imperative.

"Specification" means any statement of work or any description of the physical, functional, or performance characteristics, or of the nature of property, service, or construction. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a property, service, or construction item for delivery. Unless the context requires otherwise, the terms "specification" and "purchase description" are used interchangeably throughout this Manual.

"Standard Commercial Supplies and Services" are supplies or services that are regularly used by the Authority in the course of normal business operations, are commercially available
and have been similarly sold or traded to the general public. Examples include vehicle parts, grounds keeping and janitorial services, office and janitorial supplies, ordinary equipment (such as personal computers, copier and postage machines), etc.

(69) “Suppliers”, as used in Section 3-402.01 (Prequalification) of the Authority’s Procurement Policy Manual, means prospective bidders or offerors.

(70) “Supplies” means all property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

(71) "Surplus Materials" means any supplies, other than expendable supplies, no longer having any use to the Authority. This includes obsolete supplies, scrap materials, and nonexpendable supplies that have completed their useful life cycle.

(72) “TPA” means Third Party Administrator.

(73) An “Unsolicited Offer” is any offer other than one submitted in response to a solicitation.

(74) “USDOT” or “US DOT” means the United States Department of Transportation.

(75) “Written” or “In Writing” means the product of any method of forming characters on paper, other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted or stored.
ATTACHMENT B - LEGAL AUTHORITY REFERENCES


Chapter 2: Specific Authority: 163.568(2 (k), F.S, Law Implemented: FTA Circular 4220.1F


Chapter 4: Specific Authority: 163.568(2 (k), F.S, Law Implemented: FTA Circular 4220.1F.


Chapter 6: Specific Authority: 163.568(2 (k), F.S; Law Implemented: 163.568, F.S.

Chapter 7: Specific Authority: 163.568(2 (k), F.S; Law Implemented: 163.568, F.S.


Chapter 9: Specific Authority: 163.568(2 (k), F.S; Law Implemented: 163.568, F.S.

Chapter 10: Specific Authority: 163.568(2 (k), F.S; Law Implemented: FTA Circular 4220.1F; 287.056, F.S.; 287.057, F.S.


Chapter 12: Specific Authority 163.568(2 (k), F.S.; Law Implemented: 112.311-112.326 F.S., 112.313, F.S.; 112.313(2), F.S.; FTA Circular 4220.1F.