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# HILLSBOROUGH TRANSIT AUTHORITY POLICY MANUAL

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HILLSBOROUGH TRANSIT AUTHORITY
POLICY MANUAL

100: HART ORGANIZATION
110: PURPOSE

110.01 MISSION AND VISION

The mission and vision of Hillsborough Transit Authority (hereinafter "HART" or "Hillsborough Area Regional Transit") are established by the HART Board of Directors and shall be as follows:

(1) Mission Statement

HART takes people to places that enhance their lives.

(2) Vision Statement

HART invites, inspires and implements sustainable and innovative transportation.

Specific Authority: 120.52(1)(b), 163.568(2)(k) F.S.
Law Implemented: 120.53(2)(d)(4), 163.568(1) F.S.

EFFECTIVE DATE FOR REVISION: 09/11/2017

HART Clerk:
110.02  PURPOSE

The Hillsborough Transit Authority (hereinafter “HART”) was created by its member governments pursuant to the Regional Transportation Authority Law, Chapter 163.565, et seq., Florida Statutes, to plan, finance, acquire, construct, operate, and maintain public transit facilities, together with such supplementary transportation assistance as may be necessary or advisable to service the public transit needs of its member jurisdictions and of such areas with which HART may contract for service.
120.01 MEMBERS OF HART

HART is a body politic and corporate created pursuant to Part V, Chapter 163 of the Florida Statutes and operating under its Charter, as amended. HART is comprised of three (3) members, those being the County of Hillsborough, Florida, the City of Tampa, Florida, and the City of Temple Terrace, Florida. Any county, municipality, or other political subdivision contiguous to a member of HART may apply to become a member of HART pursuant to the limitations imposed under Chapter 163 and the Amendment and Restatement of the Charter of the Hillsborough Transit Authority, dated January 21, 1980.

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.
Law Implemented: 120.53(1)(a); 163.567(1) F.S.

EFFECTIVE DATE FOR REVISION: 9/22/08
100:     HART ORGANIZATION
120:     GENERAL ORGANIZATION OF HART

120.02 BOARD OF DIRECTORS

(1) Representation

The Board of Directors of HART ("Board") shall consist of at least one (1) Board Member representing each local government member and two (2) Board Members appointed by the Governor. In addition, each member shall appoint one (1) additional Board Member for each 150,000 persons, or major fraction thereof, resident solely in that member’s jurisdictional limits. For example, persons resident in Hillsborough County, will be those persons living in unincorporated Hillsborough County, that is exclusive of persons resident in Tampa, Temple Terrace or Plant City. In no event shall the Board be composed of less than five (5) Board Members, including the two appointed by the Governor. At a minimum, one (1) Board Member appointed by each local government member shall be either the public official elected to the chief executive office of the member (if the member has an elected chief executive officer) or a public official elected to the governing legislative body of the member if the elected chief executive officer does not serve.

(2) Term

All Board Members must be resident in (1) Greater Hillsborough County, (1st Option) i.e. inclusive of all municipalities or (Second Option) not including Plant City. A Board member shall not be obligated to be resident in the jurisdiction appointing said Board member. All Board members shall be appointed for 3-year terms and each Board Member shall hold office until their successor has been appointed and qualified. Said terms shall end on November 30 of the appropriate year or such other date designated by the member government. If a local government member's laws or procedures provide for a different appointment time frame for elected officials,

HART Clerk: ________________________________
said member may create its own procedure for appointing a replacement before the end of the term, in order to avoid a vacancy. A vacancy occurring during a term shall be filled only for the balance of the unexpired term. An appointment to fill a vacancy shall be made within 20 days after the occurrence of the vacancy or before expiration of the term, whichever is applicable. The “occurrence of a vacancy” shall be deemed to happen upon the date of delivery of notice to the appointing member of the fact that a vacancy exists. If no appointment is made within the prescribed time by the appointing member, the Board, by a majority vote, shall appoint an eligible person to the Board with like effect as if the appointment were made by the member. However, if the Board does not appoint an eligible person within 10 days, the appointment shall then be made by the Governor within 10 days thereafter. Any Board Member shall be eligible for reappointment.

(3) Quorum

A majority of the Board of Directors of HART at that time shall constitute a quorum and the presence of a quorum shall be necessary to take any official action. Official action may only be conducted at meetings of the Board.

(4) Committees

(a) The Chair may appoint standing and/or ad hoc committees pursuant to Policy 130.01. A majority of the committee members shall constitute a quorum, and the presence of a quorum shall be necessary to take any committee action. The Chair may appoint interim or replacement members to a standing and/or ad hoc committee as may be necessary to ensure that a quorum for such committee can be obtained. Committee action shall be limited to a recommendation to the full Board, and action of a committee shall not constitute an action by the Board. If action by the Board is required by law, a committee may consider the issue and make a
recommendation for action to the Board. The Board shall have the discretion to delegate authority to a committee when authorized by law.

(b) When standing and/or ad hoc committees have been appointed, the standing committees will generally consider matters within each committee's subject matter area and provide a recommendation to the Board. However, the Chair may elect to have matters be considered by the Board without consideration by a committee when appropriate based on time constraints, legal requirements, or other considerations.

(c) HART Executive committee shall be comprised of HART Board Officers and Chairs of committees. The Executive committee will be responsible for governance of HART in the absence of Board meetings. Specifically, the Executive committee provides direction, management, and decision-making in an emergency capacity on behalf of the Board of Directors to determine matters that do not warrant convening a special meeting of the Board, or in which the convening of such a meeting is impractical and which matter should not be postponed until the next scheduled meeting of the Board. Actions of the Executive committee shall be reported to the full Board of Directors at its next regular meeting. The Executive committee also shall be responsible for recommending changes to improve effective policymaking, oversight, communications, and outcomes, by developing revisions and enhancements to Board policies.

Specific Authority: 120.52(1)(b), 163 568(2)(k) F.S.
Law Implemented: 120.53(1)(a); 163.567 F.S.

EFFECTIVE DATE FOR REVISION: 11/5/2018

HART Clerk: ________
HILLSBOROUGH TRANSIT AUTHORITY
POLICY MANUAL

100: HART ORGANIZATION
120: GENERAL ORGANIZATION OF HART

(5) Public Officers

Each Board Member who accepts appointment to the HART Board of Directors thereby acknowledges a fiduciary duty to HART and the duty to obey all laws, or portions thereof, which are applicable to this position. All Board Members are "public officers", and as such are subject to certain laws, including, but not limited to:

- Florida Government in the Sunshine Law, Florida Statutes Section 286.011.
- Florida Public Records Law, Florida Statutes, Chapter 119.
- Florida Constitution Article I, Section 24, Public Records and Meetings.
- Florida Constitution, Article II, Section 8, Ethics Provisions.
- Florida Statutes, Chapter 112, Part III, Code of Ethics, including Section 112.3147, which designates the Florida Commission on Ethics as the entity responsible for creating the requisite forms. These Forms are available from the Florida Commission on Ethics.

Other Policies

Each Board Member also accepts the duty to comply with the same policy statements and standards applicable to HART employees, as set forth below:

- Professionalism and Professional Conduct [410.01]
- Employee Ethics and Conflict of Interest [410.02(1), 410.02(2)(d), (e), (f)]
- Avoiding Conflicts of Interest [410.02(2)(b)]
- Soliciting or Accepting Gifts [410.02(2)(c)]
- Nepotism [410.02(2)(g)]
- Other applicable HART Employee Policies

EFFECTIVE DATE FOR REVISION: 11/05/2018

HART Clerk: [Signature]
(7) Notification

(a) If any Board Member is informed by any person, that he or she has personal knowledge that a HART employee or HART official has violated any criminal law or participated in the violation of any criminal law, the Board Member shall instruct said person to immediately report those facts to the appropriate law enforcement officials.

(b) Any Board Member who has personal or factual knowledge that an employee or HART official has violated any law, rule regulation or HART policy or has participated in any other wrongdoing may, if appropriate, and in consultation with Board General Counsel report the alleged violation or wrongdoing immediately to:

1. The Florida Commission on Ethics, and/or
2. The appropriate law enforcement officials, and/or
3. The entire HART Board at the next scheduled Board meeting or in writing, and/or,
4. The appropriate person(s) identified in applicable HART policies and/or,
5. Pursuant to the Board of Director's whistleblower procedures, if applicable, and/or
6. HART's outside auditor, in writing.

(c) Any Board Member who has personal or factual knowledge that an employee or HART official has violated any HART policy shall report any alleged violation or wrongdoing immediately to:
1. The Chief Executive Officer (hereinafter "CEO"), in writing, unless the Board Member has reason to believe that the CEO is personally involved in the violation or wrongdoing.

2. If the Board Member has reason to believe that the CEO is personally involved in the violation or wrongdoing, the Board Member shall then notify one or more of the agencies or persons set forth in (b) above.

(d) All notices identified above may be given simultaneously. An e-mail or facsimile transmission, with a confirmed receipt, shall be considered an appropriate written notice.

(e) The processing of such complaints shall be documented and the final outcome shall be reported to the HART Board.

(8) Removal

A Board Member may be removed from office by the Governor or by the appointing member for misconduct, malfeasance, misfeasance or neglect of duty in office. A Board Member may be censured by a majority vote of the entire Board. Said censure may include a request to the appointing authority for appointment of a replacement.

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.
Law Implemented: 120.53(1)(a); 163.567(1) F.S.

EFFECTIVE DATE FOR REVISION: 11/5/2018

HART Clerk: [Signature]
120.03 OFFICERS

(1) There shall be elected by the Board, from among the members of the Board, a Chair, a Vice Chair, and a Secretary at the first January meeting each year through an open process, with nominations accepted from the floor. General Counsel is to chair the election process as a neutral party. HART Board Officers positions are to be filled by at least one County elected representative, with the exception of the requirement that at least one County elected representative, any Board Member may be elected to serve as an officer.

(2) All officers shall be elected for a term of one (1) year, or until the officer's successor is duly qualified, and shall serve at the pleasure of the Board.

(3) A Board member may serve the Board in consecutive terms as an officer in various capacities; however, no Board member shall serve in the same capacity for more than three (3) consecutive terms as an officer.

(4) Any officer may resign at any time by giving written notice to the Chair and the CEO of HART, which shall take effect at the time specified therein or, if no time is specified, upon acceptance of such resignation by the HART Board.

Specific Authority: Law Implemented: 120.52(1)(b), 163 568(2)(k) F.S.
120.53(1)(a); 163.567 F.S.

EFFECTIVE DATE FOR REVISION: 7/15/2019

HART Clerk: [Signature]
HART's Board, CEO and Senior Staff will be organized as follows:

HART Board of Directors
State of Florida: Appoints 2 Members
Hillsborough County: Appoints 7 Members
City of Tampa: Appoints 3 Members
City of Temple Terrace: Appoints 1 Member
*See 120.02 (1)

CEO

Auditor

General Counsel

Senior Staff and
Other Staff Employees

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.
Law Implemented: 120.53 (2)(d)(4); 163.568(13) F.S.

EFFECTIVE DATE FOR REVISION: 08/03/2015
120.05 TRAVEL POLICY: BOARD MEMBERS, CEO & OTHER EMPLOYEES

(1) Purpose

The CEO and the CEO’s designee shall establish reasonable rules and regulations for travel consistent with State and Federal laws.

(2) Authorization

(a) Travel for Board members will be approved in advance by the Board, at either a Regular or Special meeting of the Board. The travel plan, transportation, and purpose for the travel will be placed on the Consent Agenda for such meeting.

(b) Travel authorizations for the CEO will be approved in advance by the Chair of the Board.

(c) Emergency authorization for travel by a Board Member or CEO will be approved by the Chair of the Board.

(d) Emergency authorization for travel by a Board Member or the CEO will be approved by the Vice Chair or Secretary in the absence of the Chair.

(e) Travel for all other employees will be approved by the CEO or his or her designee.

(f) Authorization for travel will be guided by the Travel Rules for agencies established by the State Department of Banking and Finance.

HART Clerk: [Signature]
(3) Advancements

Notwithstanding the foregoing, the CEO (or the Chair of the Board, for Board Members) may authorize the making of advances to cover the reasonable anticipated costs of travel.

Specific Authority: 120.52(1)(b), 163.568(2)(k), F.S
Law Implemented: 112.061; 163.567(13), F.S

EFFECTIVE DATE FOR REVISION: 11/05/2018
120.6 GENERAL AUTHORITY

(1) The Hillsborough Transit Authority ("HART") was established by authorization of Chapter 163 Florida Statutes for the purpose of planning, financing, acquiring, constructing, operating, and maintaining mass transit facilities, together with such supplementary transportation assistance as may be necessary or advisable to service the mass transit needs of its members and of such areas with which HART may contract for service.

(2) All powers and duties of HART shall be those powers and duties conferred by the Amendment and Restatement of the Charter of the Hillsborough Transit Authority dated January 21, 1980 (the "HART" Charter), Part V, Chapter 163, Florida Statues and other applicable provisions of federal and state law and regulations.

(3) The establishment and adoption of Board policy shall be the responsibility of HART's Board of Directors and the execution of that policy shall be the responsibility of the CEO, under the direction of the Board.

(4) Authority of HART is vested in the HART Board of Directors, except as provided in the HART Charter or as delegated in these policies.

(5) The authority of the CEO shall be as provided in the HART Charter and/or as delegated by the HART Board of Directors as provided in these policies.

Specific Authority: 120.52(l)(b), 163.568(2)(k) F.S.
Law Implemented: Part V, Chapter 163, F.S.

EFFECTIVE DATE FOR REVISION: 03/05/12

HART Clerk: [Signature]
120.7 STRATEGIC PLANNING

(1) The HART Board of Directors shall develop and adopt a strategic plan to serve as a guide for implementing HART's vision, mission, core values and goals.

(2) The strategic plan shall cover a five year period and include the Board-established mission, vision, core values and broad goals. The strategic plan shall be reviewed and updated, as needed, concurrent with the preparation of the HART annual budgets.

(3) The Chief Executive Officer (CEO) shall be responsible for managing and recommending updates for the five-year strategic plan. Each proposed update shall include specific objectives, strategies, and tactics to implement the plan, along with measurements for evaluating the success of the plan. These measurements shall be presented to the Board for its review and approval. The CEO performance and that of the Authority shall be measured accordingly.

EFFECTIVE DATE FOR REVISION: 11/5/2018

(4) The Transportation Improvement Program (TIP) is a list of major transportation projects to be funded over the next five years, and priorities for the next projects to be funded in the future. The TIP is the "short-range" component of the Hillsborough County Metropolitan Planning Organization (MPO)'s Long Range Transportation Plan. HART updates these priorities on an annual basis.

(5) The HART Board of Directors, as HART's Governing Body, shall receive, review, and approve a list of HART priority projects to be submitted for inclusion in the Hillsborough County MPO Transportation Improvement Program, during a HART Board regular meeting each year, prior to submittal to the MPO.

EFFECTIVE DATE FOR REVISION: 07/20/2020

HART Clerk: [Signature]
130.1 CHAIR

(1) The duties of the Chair shall include presiding over all meetings of the Board, assignment of all general and special tasks authorized by the Board to the CEO, execution of all documents authorized for execution by the Board, and such other duties as may be required by the Board or designated by law. All HART committee appointments are to be made by the HART Board Chair, but committee leadership will be elected by the committees' members at their first scheduled meeting.

(2) The Chair shall be authorized to appoint, on a temporary basis, any Board member of his or her choosing to act in the capacity of the Secretary in the absence of the Secretary.

(3) The Chair shall oversee the satisfactory performance of the CEO between Board meetings to ensure that the CEO implements all Board policies and directives as approved by the Board of Directors of HART and shall be responsible for recommending and overseeing any review procedure relating to the CEO's performance.

Specific Authority: 120.52(1)(b), 163.568(2)(k) F S
Law Implemented: 163.567(10) F S

EFFECTIVE DATE FOR REVISION: 11/07/2016
130.2 VICE CHAIR

The Vice Chair shall act in the capacity of the Chair in the absence of the Chair.

Specific Authority: 120.52 (1)(b); 163.568(2)(k) F S
Law Implemented: 163.567(10) F S

EFFECTIVE DATE FOR REVISION: 09/22/08
130.3 SECRETARY

The Secretary shall preside over all board meetings in the absence of both the Chair and Vice Chair. The Secretary shall attest to the accuracy of all resolutions and validity of the Chair or Vice Chair's signature.

Specific Authority: 120.52 (1)(b), 163.568(2)(k) F.S.
Law Implemented: 163.567 F.S.

EFFECTIVE DATE FOR REVISION: 09/22/08
140.01 EMPLOYMENT AUTHORITY

(1) Executive Administrator:

The position of Executive Administrator is the Chief Executive Officer ("CEO") and has been created to assist HART in performing the duties and responsibilities specified in Part V, Chapter 163, Florida Statutes, to carry out the purposes of providing public transportation services to the citizens of HART’s Region.

(2) Professional Contractual Services:

The HART Board of Directors by resolution adopted by the Board, unless otherwise delegated, may also contract for services for the purpose of carrying out the duties and powers of HART. Procurement of services shall be through an open and competitive process pursuant to Chapter 500.
140.02    CHIEF EXECUTIVE OFFICER (CEO)

(1) The Chief Executive Officer ("CEO") shall be the chief staff officer of HART, who shall be appointed by and serve at the pleasure of the Board. The CEO shall be responsible for implementation of all policies established by HART. The CEO shall be responsible for the maintenance and operation of the physical facilities of HART. The CEO shall maintain such records as may be required in the performance of his or her duties upon the request of the Board. The CEO shall further perform such other duties as may be specified by the Board.

(2) The CEO may employ such other employees as may be necessary for the proper administration of duties and functions of HART delegated to the CEO by the Board, including determination of the qualifications of such persons. Provided, however, that the Board of Directors of HART shall approve the number of employee positions and fix the compensation of employees.

(3) It shall be the policy of the Board to prohibit involvement by Board members, both individually and collectively, in the normal employer-employee relationship between the CEO and any other employee, or employee union, of HART.

(4) A copy of the employment agreement between HART and the CEO shall remain on file at the main business office of HART for public inspection.

Specific Authority:  120.52(1)(b); 163.568(2)(k) F.S.
Law Implemented:  163.567(12) F.S.

EFFECTIVE DATE FOR REVISION: 03/05/12

HART Clerk: [Signature]
140.03 GENERAL COUNSEL

(1) The General Counsel shall be the chief legal counsel to the Board of Directors of HART and shall have cognizance over legal affairs. The General Counsel's direct responsibility shall be those matters requiring authorization or approval by the Board of Directors and such other matters as assigned by the Board of Directors or the CEO. The General Counsel shall serve at the pleasure of the Board of Directors. If the General Counsel is not a HART employee, then the General Counsel shall be selected by the Board of Directors through an open and competitive process.

(2) In addition to the General Counsel, HART may retain legal counsel as employees of HART or as contract legal counsel. The CEO may hire staff counsel as employees of HART. Contract counsel retained by HART shall be approved by resolution of the Board of Directors consistent with the procurement process provided in Chapter 500 herein. HART legal counsel shall regularly provide to the Board of Directors a report of all pending litigation and other significant pending legal matters. All resolutions, contracts, and other instruments shall be approved as to form by the General Counsel, staff counsel or such other legal counsel as are designated by the General Counsel and the CEO.

(3) All legal counsel employed by or contracting with HART shall represent the entire agency consistent with the provisions in Florida Bar Rule of Professional Conduct 4-1.13. Legal counsel serving as the “local government attorney”, shall be subject to Florida’s Code of Ethics Standards as codified in Chapter 112, Part III, Florida Statutes.
140.04 AUDITOR

The Board of Directors of HART, by resolution of the Board, shall employ an independent certified public accountant to annually audit the accounting and budgetary records of HART, and who shall submit their findings to the Board. The Board shall provide a copy of the annual audit to each member of HART.

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.
Law Implemented: 163.567; 163.568(2) F.S.

PROPOSED EFFECTIVE DATE: 03/05/12

HART Clerk: [Signature]
140.05 HART CLERK

The CEO of HART or the CEO’s designee shall be the HART Clerk, whose duties and responsibilities shall include the listing of the Official Reporter, indexing by subject matter of all rules and orders of HART.

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.
Law Implemented: 120.52(11); 120.53(4) F.S.

EFFECTIVE DATE FOR REVISION: 09/22/08

HART Clerk: [Signature]
150.01  HART'S PRINCIPAL OFFICE

The main business office of HART is located at:

HART
1201 E. 7th Avenue
Tampa, Florida 33605

and shall be open to conduct business from 8:00 a.m. to 5:00 p.m. weekdays, excluding holidays.

The CEO or the CEO's designee, at HART's address is HART's agent for service of process for all matters relating to HART.

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.
Law Implemented: 163.568 F.S.

EFFECTIVE DATE FOR REVISION: 08/03/2015

HART Clerk: [Signature]
160.01 FINAL ORDERS

(1) HART Clerk shall maintain an official list of all final orders of HART, pursuant to the retention schedule approved in accordance with applicable state law. All final orders of HART shall be available for public inspection and copying in accordance with the Public Records policy Section 240.01 “Inspection and Copying of Records” at HART Principle Office.

(2) All HART final orders issued pursuant to section 120.565, Florida Statutes, and subsections (1), (2), and (3), of section 120.57, Florida Statutes, shall be sequentially numbered as rendered using a three-part number separated by a dash with the first part before the dash indicating the year, the second part indicating the month, and the third part indicating numerical sequence of the order issued for that year beginning with number one each new calendar year.

(3) The HART Clerk shall assist the general public in using and locating HART final orders.

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.
Law Implemented: 120.53 F.S.

EFFECTIVE DATE FOR REVISION: 11/05/2018

HART Clerk: [Signature]
210.01 PUBLIC MEETINGS

(1) All meetings of the Board, including meetings of Board committees and subcommittees, shall comply with the applicable laws and the Constitutions of Florida and of the United States of America including Florida’s Government in the Sunshine and Public Records Laws and the Administrative Procedure Act to the extent required by law.

(2) The Board shall determine the time and place of public hearings conducted by the Board and except in the case of emergency meetings, notice to the public will be given at least seven (7) days in advance of said meetings.

(3) Written records or minutes of all public hearings and informational meetings conducted by either HART staff or the Board shall be kept to the extent required by law.

(4) The Board shall conduct its business with a public hearing when required by Board rule or by local, state, or federal policy or law, including, but not limited to hearings required under Federal Transit Authority (FTA) regulations.

(5) The CEO or the CEO’s designee shall conduct informational meetings regarding route changes, additions, or deletions. Informational meetings may be held in the area or community that will be affected and at such times as will be convenient to the public.

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.
Law Implemented: Ch. 119; 120.525; 120.53(1)(a),(b); 286.011 F.S.

EFFECTIVE DATE FOR REVISION: 09/22/08

HART Clerk: [Signature]
210.02 REGULAR MEETINGS

Regular meetings of HART shall be held monthly at least ten months a year at such times and places as may be determined from time to time by the Board.

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.
Law Implemented: 163.568(2) F.S.

PROPOSED EFFECTIVE DATE: 08/03/2015

HART Clerk: [Signature]
210.03 SPECIAL MEETINGS

(1) Special meetings of HART may be called at any time by the Chair of the Board, or by the Vice Chair in the absence of the Chair and by the Secretary in the absence of both the Chair and Vice Chair or by the CEO or HART employee designated by the CEO to act in the CEO's absence.

(2) Notice of each Special Meeting shall be given to each Board member by the HART Clerk in the manner as, in the HART Clerk's judgment, will constitute adequate notice to each Board member in compliance with applicable law.

(3) It is the responsibility of each individual Board member to furnish the HART Clerk with their business address, business telephone number, and e-mail address for the purpose of leaving notice of such special meeting calls.

(4) The notice of a Special Meeting to the public and to the Board members shall include the time, place, and subject matter of the meeting. No business shall be transacted at such special meeting save that specified in the notice, unless each absent member has waived notice of subject matter.

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.
Law Implemented: 120.53(1)(a); 163.568(2) F.S.

EFFECTIVE DATE FOR REVISIONS: 08/03/2015

HART Clerk: [Signature]
210.04  EMERGENCY MEETINGS

(1) Notwithstanding the provisions of sections 210.02 and 210.03 herein, the Board may hold emergency meetings for the purpose of acting on emergency matters affecting the public health, safety, or welfare.

(2) HART shall provide such notice as is reasonable under the circumstances.

(3) Notice of an Emergency Meeting shall be given to each Board member by the HART Clerk or CEO in the manner as, in their judgment, will constitute adequate notice to each Board member in compliance with applicable law. The HART Clerk or CEO is specifically authorized to give notice of an Emergency Meeting to all Board Members in the manner as, in their judgment, will constitute adequate notice to each Board member in compliance with applicable law.

(4) HART shall take only such action necessary to protect the public interest required by the emergency.

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.
Law Implemented: 120.525; 163.568(2) F.S.

EFFECTIVE DATE FOR REVISION: 08/03/2015

HART Clerk: [Signature]
210.05 PUBLIC COMMENTS

(1) Declaration of Public Policy

It is the intent of these rules that the deliberation and actions of the Authority be conducted and taken openly in order that the citizens may be fully informed, it being the finding of the Authority that the citizens must be fully informed if they are to be intelligently advised as to the conduct of public business by the Authority. Towards that end, the Authority makes the following findings and declares the following legislative intent:

(a) The Authority has traditionally permitted public participation in its public meetings.

(b) Many Florida local governments allow public participation but have adopted rules to govern its conduct.

(c) Public participation in government business is the bedrock of American local government and should be protected, permitted, and not discouraged consistent with principles of common and statutory law.

(d) In 2013, the Florida Legislature adopted Section 286.0114, Florida Statutes, that requires municipal boards and Authorities to provide members of the public a reasonable opportunity to be heard before official action is taken.

(e) At the same time, some forms of comment that slander, defame, libel, disparage, or smear individuals though ad hominem attacks are neither germane to public business and are inappropriate to the decorum of public meetings involving the public business of an entity of local or state government.

(f) The Authority is permitted to set reasonable ground rules for public participation within its meeting and the meetings of any board or committee of the Authority.

HART Clerk: [Signature]
200: PUBLIC ACCESS AND INFORMATION
210: MEETINGS

(2) Definitions

For the purpose of these rules, the following definitions shall prevail:

(a) A “meeting” is a gathering of quorum of the membership of the Authority, or any board or committee of the Authority for the purpose of receiving information relating to public business, or for discussion of public business, or for official action upon a proposition related to public business.

(b) A “regular meeting” is a meeting held pursuant to a schedule of such meetings to conduct public hearings, or otherwise discuss or act upon matters of public interest.

(c) A “special meeting” is any meeting other than a regular meeting held by the Authority or any committee or subcommittee thereof.

(d) The “presiding officer” shall mean, the Chairman of the Authority Board, or the chairman of a particular committee or subcommittee for the purpose of its meetings.

(3) Conduct of Meetings

(a) The presiding officer shall preserve order and decorum at all meetings.

(b) When considering matters noticed for a public hearing of the Authority, the presiding officer shall declare the public hearing open and receive comments from the public.

(c) During any Authority meeting, the presiding officer and all board members shall maintain order and decorum.

(d) Authority staff and citizens must be recognized by the presiding officer before speaking or asking questions. Questions shall be generally open to answer by the appropriate person as determined by the presiding officer and no individual member or staff person shall be “cross-examined” by a member of the public. The purpose of this requirement is so that there is

HART Clerk:
order and so that the recording equipment will properly record all comments made by individuals wishing to comment on a specific subject.

(e) All comments must be made from the podium which is located at the front of the meeting location or by other reasonable accommodations in any other location in which an Authority meeting is held, and shall address the subject of the agenda item. Individuals that appear before the Authority are required to state their legal name for the public record. The purpose of this requirement is so that they are properly reflected in any Authority minutes and are available for future reference.

(f) At the discretion of the presiding officer, public comments to be offered for an item during which the board or Authority is acting in a quasi-judicial capacity will be limited to three (3) minutes per person so that all may be heard in the matter and the presiding officer, or his designee, shall in such instances monitor the timing and give the speaker a thirty (30) second notice prior to the expiration of the time allotted. The presiding officer may, at his discretion, or at the direction of a majority of the Authority or applicable committee, extend the time allowed for an individual to speak or to allow a speaker a single opportunity to rebut comments made by another speaker. Any such rebuttal shall be limited to three (3) minutes. After receiving public comments as provided herein, the public hearing shall be closed and all further discussion on the matter shall be limited to members of the Authority. One participant’s allotted time for addressing the board or Authority may not be donated to another participant.

(g) Those persons wanting to express his or her opinion on an agenda item noticed for public hearings without addressing the board or committee may do so in writing delivered to the Authority Clerk.
200: PUBLIC ACCESS AND INFORMATION
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(h) As a board or Authority considers consent agenda items, emergency items, items involving official acts that involve no more than a ministerial act, approval of minutes, ceremonial proclamations, and other similar items, the presiding officer may, at his discretion, or at the direction of a majority of the board or Authority, accept comments from those in attendance.

(i) When considering a matter in public hearing, the Authority shall accept comments from those members of the public who have indicated their desire to address the Authority concerning such matter by signing up at the commencement of the meeting on participation cards provided by the Authority Clerk.

(4) Public Participation and Comment

The Authority has a long standing policy which encourages its citizens to contact HART staff to redress issues which involve the Authority. In cases governed by grant terms, State Laws or Federal law requirements with regard to participation, those requirements are controlling and these guidelines are only applicable to the extent they provide greater public participation than such other governing requirements. In order to comply with Section 286.0114, Florida Statutes, the Authority hereby establishes a Public Comment Policy applicable to all Authority board meetings and Authority committee and subcommittee public action to allow members of the public an additional opportunity to address the Authority and its committees and subcommittees. In addition to public hearings, a special time shall be set aside at all Authority meetings for the purpose of receiving comments and suggestions from members of the public. All comments made during any Public Comment period shall be subject to the following procedures:

(a) The Authority allocates up to thirty (30) minutes at each Authority meeting for citizens who wish to appear before the Authority to make a request, voice a complaint or concern,
express an opinion, or for some other type of recognition. The presiding officer will divide the
time equally between all who have signed up to speak; but in no case may a citizen speak longer
than three (3) minutes. A Public Comment period not to exceed thirty (30) minutes will be held
during any board or Authority meeting. The presiding officer, as provided elsewhere herein, may
permit additional time to a given speaker on a case by case basis.

(b) Persons who wish to make a statement during the Public Comment period will
register on a sign-up sheet prior to making a statement. The sign-up sheet will be available thirty
(30) minutes before the start of the meeting. No one will be allowed to have his or her name placed
on the list by telephone request to staff.

(c) Each person who signed up to speak will have up to three (3) minutes to make his
or her statement. The speakers will be acknowledged by the presiding officer in the order in which
their names appear on the sign-up sheet. Speakers shall address the Authority from the podium,
and not approach the Authority members or staff. Speakers will begin their statement by first
stating their legal name.

(d) Statements are to be directed to the Authority as a whole, and not to individuals.
Public comment is not intended to require the Authority to provide any answer to the speaker.
Discussions between speakers and members of the audience or prior speakers will not be allowed.

(e) Speakers will be courteous in their language and presentation.

(f) Only one speaker will be acknowledged at a time. In the event a group of persons
supporting or opposing the same position desires to be heard, in the interest of time, a spokesperson
shall be designated to express the group's concern. Likewise, in the event the number of persons
wishing to attend the hearing exceeds the capacity of the meeting place, one or more delegates

HART Clerk: [Signature]
shall be selected to speak on behalf of each group. If the time periods expire before all persons who have signed up get to speak, those names will be carried over to the next Public Comment period, or if the presiding officer consents, these comments can be heard at that meeting.

(g) Any action on items brought up during the Public Comment period will be at the discretion of the Authority. It is the intent of the Authority and any committee or subcommittee thereof not take any action on subject matter for which it has not had the opportunity to fully investigate and gather complete information.

(5) Decorum

The presiding officer shall preserve strict order and decorum at all meetings.

(a) In conducting the public’s business, Authority members are committed to the principles of civility, honor, and dignity. Individuals appearing before the Authority are requested to observe the same principles when making comments on items and issues presented to the Authority or one of its committees or subcommittees for its consideration.

(b) Staff members and citizens are required to use proper language when addressing the Authority or the audience. Staff members and citizens shall not use profanity or cursing, aggressive or threatening behavior when addressing the Authority or other participants. All comments are directed to the presiding officer and not to individual members of the Authority or to the audience. No personal verbal attacks toward any individual will be allowed during the conduct of an Authority meeting. The presiding officer may have individual(s) removed from the podium and/or meeting chambers if such conduct persists after a warning has been issued.

(c) All members of the Authority shall accord the utmost courtesy to each other, the members, those appearing before the Authority shall refrain at all times from rude and derogatory

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remarks, reflections as to integrity, abusive comments and statements as to motives and
personalities. During Authority meetings, cell phones are to be turned off or silenced. Use of cell
phones by Authority members and staff for talking, texting, emailing or otherwise will not be
allowed during meetings while at the dais, except for emergency communications, research or
during breaks.

(d) In addition to the prohibitions in (3), above, Section 871.01, Florida Statutes,
declares that any person who willfully interrupts or disturbs any assembly of people meeting for
any lawful purpose shall be guilty of a misdemeanor of the second degree, and may be arrested by
police officers present. This may be done in the absence of the conduct being noted, or of the
offender being called to order, by the presiding officer.

(e) In the case that any person is declared out of order by the presiding officer and
ordered expelled, and does not immediately leave the meeting chambers, the following steps shall
be taken:

1. The presiding officer shall declare a recess.

2. The person shall be approached by a police officer and advised that he has been
ordered expelled.

3. In case the person does not remove himself from the area, he may be placed
under arrest for violation for Section 871.01, Florida Statutes, should the person
continue to willfully interrupt or disturb the meeting.

4. In the event any person who is ordered expelled leaves the meeting chambers
voluntarily and then returns to the same meeting, he is subject to arrest for violation

HART Clerk: [Signature]
of Section 871.01, Florida Statutes, should the person continue to willfully interrupt
or disturb the meeting.

(6) **Waiver of Rules**

The Authority may, at any time, waive all or a portion of these rules of procedure during
the course of a meeting. Provided, however, that any such waiver shall only be done upon a motion
and majority approval of the waiver by members of the Authority present and voting. Such waivers
shall only be granted to insure the protection of the right of the members of the public to be given
a reasonable opportunity to be heard before the Authority takes official action on a proposition.

(7) **Severability**

If any provision or portion of this resolution is declared by any court of competent
jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and
portions of this Resolution shall remain in full force and effect.

*Law Implemented: 286.0114, F.S.*

*EFFECTIVE DATE FOR REVISION: 12/04/17*

HART Clerk: [Signature]
210.06  TELEPHONIC PARTICIPATION

(1)  So long as there is a quorum physically present at the meeting site, that is, at least seven of the thirteen Directors are present and in attendance (or such other quorum requirement as may be applicable in the future), other Directors of the Board may participate fully via telephonic means.

(2)  Full participation shall include debate, deliberation, and voting on any action the Board is intending to take.

(3)  Notwithstanding the foregoing, however, any individual Director shall be limited to only two regular Board Meetings in a calendar year for such telephonic participation, except in the event of exigent or emergency circumstances.

(4)  The Board of Directors shall determine by a majority vote of a quorum whether a requested additional telephonic participation request, i.e. beyond the two permitted by this policy, meets the requirements of an exigent or emergency basis. Such determination shall be in the sole discretion of the Board.

(5)  In the event of an Emergency Meeting pursuant to Policy 210.04, the requirements of Section 1 and Section 3 shall not apply and the existence of exigent or emergency circumstances identified in Section 4 shall be presumed without need of any vote by the Board of Directors.

HART Clerk: ______________________

EFFECTIVE DATE FOR REVISION:  09/23/2019
220.01 NOTICE OF PUBLIC MEETINGS, HEARINGS, OR WORKSHOPS

(1) Notices

(a) Except in the case of an Emergency Meeting, HART shall give at least seven (7) days public notice of any public regular, special or informational meeting, hearing, or workshop.

(b) Such notice shall state the date, time and place of the meeting, hearing, or workshop.

(c) The notice shall be in substantially the following form:

MEETING NOTICE

HILLSBOROUGH TRANSIT AUTHORITY (HART)

MEETING NAME

DATE

START TIME

PLACE

A copy of the agenda may be obtained by writing to HART, 1201 East 7th Avenue, Tampa, Florida 33605; or by contacting HART Clerk of the Board at 813-384-6552.

Pursuant to provisions of the American with Disabilities Act, any person requiring special accommodations to participate in this meeting is asked to contact HART Clerk of the Board at 813-384-6552 at least seven days before the meeting. If you are hearing or speech impaired, please contact HART by calling the TDD (813) 626-9158.

Section 286.0105, Florida Statutes, provides that if a person decides to appeal any decision made by a board, agency, or commission with respect to any matter considered at a meeting or hearing, he or she need a record of proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

HART Clerk: [Signature]
200: PUBLIC ACCESS AND INFORMATION  
220: NOTICE  
220.01 NOTICE OF PUBLIC MEETINGS, HEARINGS, OR WORKSHOPS cont’d)  

(2) Meetings Open to the Public  

Meetings, hearings, and workshops of HART shall be open to the public, as provided by law, and the Board shall establish such reasonable rules, as it deems desirable to enable members of the public to be heard on any matter coming before the meeting. HART shall have the discretion to restrict or limit public participation in such meetings, hearings, and workshops, in a reasonable manner as provided by law.  

(3) Records  

(a) All minutes and budget records of HART shall be deemed public records and shall be made available to the public, to the extent required by law.  

(4) Types of Meetings  

(a) A meeting, for the purpose of notice herein, is limited to a gathering for the purpose of conducting public business by the Board or a committee thereof.  

(b) A workshop is a gathering where Board members, or a person(s) designated by the Board, may be present at the meeting for any legal purpose, but at which time no official votes are to be taken or policy adopted and at which public comment may or may not be recorded.  

(c) For the meetings of those committees that do not include any Board members or that include only one Board member, such as any employee relations committee and citizen/consumer committee, notice of such committee meetings shall be the minimum amount of notice required by law, such as posting reasonable advance notice at each HART office.  

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.  
Law Implemented: Ch. 119; 120.53(1)(a); 286.011 F.S.  

EFFECTIVE DATE FOR REVISION: 11/05/2018  

HART Clerk: [Signature]
RULEMAKING PROCEEDINGS; PUBLIC HEARINGS

(1) Whenever HART seeks to draft, amend or repeal a rule as defined in Section 120.52(16), F.S., HART may hold a public hearing for the purpose of providing affected persons and other members of the public a reasonable opportunity to present evidence, arguments, and oral statements, within reasonable conditions and limitations imposed by HART to avoid duplication, irrelevant comments, unnecessary delay, or disruption of the proceeding.

(2) The notice of intent to adopt, amend, or repeal a rule may provide that a public hearing will be held.

(3) A request for a public hearing, pursuant to Section 120.54(3)(c)1., F.S., shall be in writing and shall specify how the person requesting the public hearing would be affected by the proposed rule. The request shall be submitted to HART within twenty-one (21) days after notice of intent to adopt, amend, or repeal the rule is published as required by law, in accordance with the procedure for submitting requests for public hearing stated in the notice of intent to adopt, amend, or repeal a rule.

(4) HART shall conduct a public hearing if the proposed rule:

(a) does not relate exclusively to practice or procedure; and

(b) if an affected person timely submits a written request.

(5) If the notice of intent to adopt, amend, or repeal a rule did not notice a public hearing and HART determines to hold a public hearing, HART shall publish notice of a public hearing in the
same manner as is required for publication of a notice of rulemaking at least seven (7) days before
the scheduled public hearing. The notice shall specify the date, time, and location of the public
hearing, and the name, address, and telephone number of HART contact person who can provide
information about the public hearing.

(6) HART will generally follow the Florida Administration Commission model rules for
rulemaking as set forth in Chapter 28, Florida Administrative Code.

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.
Law Implemented: 120.54 F.S.

EFFECTIVE DATE FOR REVISION: 1/09/12

HART Clerk: [Signature]
230.01 AGENDA FOR PUBLIC MEETINGS, HEARINGS OR WORKSHOPS

(1) HART shall prepare an agenda and make it available to the public five days in advance of a meeting.

(2) The agenda shall list the items in the order they are to be considered. For good cause stated in the record, items on the agenda may be considered by the Board out of their stated order with the approval of the person designated to preside.

(3) The agenda shall be specific regarding items to be considered. All matters involving the exercise of HART discretion and policy-making shall be listed and summarized on the agenda. Additions to agenda items such as "old business," "new business," "other business" or "other matters which may come before HART" or similar terms shall be for consideration of solely ministerial or internal-administrative matters which do not affect the interests of the public generally or for receiving direction with regard to matters that will be subject to subsequent public action.

(4) HART shall utilize the following or a substantially similar form in preparing its agenda:

HILLSBOROUGH TRANSIT AUTHORITY (HART)
BOARD OF DIRECTORS MEETING
[Date, Time & Place of Meeting]
AGENDA

Approval of Minutes
Public Comment
Action Items
New Business
Old Business
Miscellaneous

HART Clerk: ______
(5) The person designated to preside may make specific changes in the agenda after it has been made available for distribution, only for "good cause" shown.

(6) The meeting or workshop shall be open to the public unless otherwise specifically provided by law.

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.
Law Implemented: 286.011 F.S.

EFFECTIVE DATE FOR REVISION: 11/05/2018

HART Clerk: [Signature]
240.01 INSPECTION AND COPYING OF RECORDS

The Board of Directors authorizes the CEO or the CEO's designee to establish operating procedures for providing public records pursuant to Chapter 119, Florida Statutes, and protecting from disclosure those documents made confidential under state or federal law. These operating procedures shall include training and internal controls appropriate to ensure compliance with Chapter 119, Florida Statutes, and other applicable law, and a schedule of reasonable charges for providing access to documents and copies in compliance with state law. HART shall have the right to restrict distribution of records, as provided by law.

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.
Law Implemented: 119; 119.07(1)(a),(b) F.S.

EFFECTIVE DATE FOR REVISION: 11/05/2018

HART Clerk: [Signature]
310.01 CONDUCT OF MEETINGS

(1) All official action of HART shall be by or at the direction of the Board.

(2) A vacancy on the Board shall not impair its right to exercise all of its powers or perform all its duties.

(3) A majority of the directors serving on the Board at the time shall constitute a quorum.

(4) Official action may only be conducted at meetings of the Board, and official action may only be taken where there is a quorum of directors present at such meeting.

(5) The Board shall act by motion or resolution.

(6) All Resolutions shall be in writing prior to the vote taken thereon, except in those circumstances where the Chair determines that a prior written resolution is not practical.

(7) All motions duly adopted by the Board and recorded upon the minutes of the meeting shall be deemed and taken to have the same force and effect as resolutions, except that a resolution shall be necessary where approval and execution of the following documents by the HART Board of Directors is necessary on behalf of HART:

(a) Contract;

(b) Federal grant application or any document in connection with a federal grant;

(c) Approval of a budget;

(d) Employment of attorneys, engineers, consultants or other agents to carry out the duties and powers of HART; and

(e) Any other matter which shall require a resolution as determined by the Chair.
(8) All motions and resolutions shall be confined to one subject matter, and in the case of resolutions, that subject matter shall be briefly expressed in the title.

(9) The numerical ayes and noes taken upon the passage of all resolutions and motions shall be recorded in the minutes of the proceedings of the Board.

(10) The roll shall be called by the Secretary upon any question wherever demanded by the Chair or two members of the Board, and the Secretary shall record the vote of each member taken upon such roll call.

(11) The policies set forth in this section may be amended as provided in Section 320.01.

(12) Any of the policies in this section 310.01 may be temporarily suspended for a meeting then in session by a unanimous vote of the Board members present at the meeting.

(13) Roberts Rules of Order, Newly Revised, shall govern the proceedings of the Board of HART in all cases not specifically addressed herein.

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.

Law Implemented: 163.567; 163.568(2) F.S.

EFFECTIVE DATE FOR REVISION: 1/09/12

HART Clerk: [Signature]
320.01 PROCEDURE FOR AMENDMENT OF POLICIES

(1) **Authorize.** The Board may from time to time amend these Policies or other procedures. The amendment process shall be initiated by an affirmative vote of the Board of Directors. Upon affirmative vote of the Board of Directors, the Clerk shall establish an amendment development, review and adoption schedule determined as per this Section 320.01.

(2) **Review Meeting.** Written proposed amendment(s) of the Board Policies or other procedures shall be placed on the agenda for the next regular board meeting, or such other meeting of the Board or Committee as the Board deems appropriate ("Review Meeting"). The Board may elect to assign the Review Meeting to one or more standing or ad hoc committees.

(3) **Adoption.** After consideration of the written proposed amendment(s) at the Review Meeting, the proposed amendment(s) may be set for adoption at the next regular board meeting, or such other meetings of the Board as the Board deems appropriate. The Board may also direct revisions to the proposed amendment(s) or additional committee review of the proposed amendment(s) prior to adoption.

(4) **Rule.** If it is determined that the proposed policy amendment(s) is a rule as defined in Section 120.52, Florida Statutes, the rule adoption procedure in Policy 220.03 shall be followed. Notice shall be made as provided in Policy 220.03 as soon as practical after the amendment process is initiated pursuant to paragraph (1) herein. The public hearing referenced in Policy 220.03 shall be the Board meeting where the proposed policy amendment(s) is considered by the Board for adoption.

*Specific Authority:* 120.52(1)(b); 163.568(2)(k) F.S.

*Law Implemented:* 163.567; 163.568(2) F.S.

*EFFECTIVE DATE FOR REVISION:* 11/5/2018

HART Clerk
GENERAL PROVISIONS

(1) The provisions contained within this Chapter 400 apply to all claims, complaints and charges against an employee made by another HART employee or official.

(2) If any portion of these Employment Policies conflicts with an applicable law or Bargaining Agreement, the provisions of the law shall be controlling and to the extent that no conflict exists between the law and the Bargaining Agreement, the Bargaining Agreement shall be controlling.

(3) All HART employees shall read, understand and comply with policies approved by the HART Board and policies and procedures issued by HART management, to use the resources available for guidance and assistance, to complete all training necessary to meet work responsibilities, and to cooperate with any investigations concerning violations of policies or ethics.

(4) Managers and supervisors shall provide timely advice and guidance to employees on ethics, policies and compliance concerns. Managers and supervisors will lead by example, assure compliance with all laws and policies, encourage employees to seek advice before action, consult with the designated staff member or appointed officer, implement control measures to detect risks, and take prompt action to correct problems.

(5) Within thirty (30) days of employment in-processing or within thirty (30) days after any policy or policy revision has been approved by the HART Board and distributed, HART employees will be given a copy of the policies and understand they are expected to comply with the employment policies in Chapter 400.
400.01 GENERAL PROVISIONS (cont’d)

(6) Definitions

The CEO shall designate the appropriate staff person(s) to serve the functions of HART’s Ethics, Equal Employment Opportunity, Disadvantaged Business Enterprise, and Americans with Disabilities Officer. The CEO shall also designate staff, as necessary, to meet all state and federal or other requirements.

(7) Reporting/Notification

(a) Reporting Violations.

If there is a violation of any HART policy, the alleged violation shall be immediately reported in writing to the employee’s supervisor(s) and/or to the staff member designated to handle such violations. The supervisor or staff designee shall ensure that the appropriate investigation is conducted and will be responsible for the interview/investigation, and will report to the CEO or designee.

(i) Telephone and Web-based Reporting System - Employees may report alleged violations to HART’s Fraud and Ethics hotline. The system allows complaints to be made anonymously and information on how to access the hotline shall be contained within the HART Employee Handbook.

(b) Policy Violations – Duty to Report Non-Criminal Activity

Any employee who has personal and factual knowledge that an employee or HART official has violated any HART policy, other than such criminal violations described below, MAY also report the alleged violation or wrongdoing immediately to:

HART Clerk: ___
GENERAL PROVISIONS (cont’d)

(i) The Florida Commission on Ethics (if appropriate), and / or

(ii) The entire HART Board and the Secretary to the HART Board in writing.

(06/23/05 Revised to conform with Florida State law.)

(c) Policy Violations – Duty to Report Criminal Activity

If an Employee has personal and factual knowledge that a HART employee or HART official has violated a criminal law or participated in the violation of a criminal law, the Employee SHALL report those facts to the appropriate law enforcement officials. If an Employee has no personal or factual knowledge, but is informed by any person, that he or she has personal and factual knowledge that a HART employee or HART official has violated any criminal law or participated in the violation of any criminal law, the Employee shall instruct said person to report those facts to the appropriate law enforcement officials. The employee with such knowledge subject to “whistle blower” protections, if applicable, shall also immediately report said facts to:

(i) The CEO, in writing.

(ii) If that person has reason to believe that the CEO is personally involved in the violation or wrongdoing, the employee shall notify, in writing, one or more of the agencies or persons set forth in (b) above.

(8) Discipline

The appropriate designated staff person shall make findings and shall recommend appropriate measures based upon said findings. The Human Resource Manager or such person designated by the CEO shall carry out those recommendations.

HART Clerk: ___________
400.01  GENERAL PROVISIONS (cont'd)

(9) Any violation of these employment policies shall be subject to discipline up to and including termination.

Specific Authority:  120.52(1)(b); 163.568(2)(k) F.S.
Law Implemented:  163.567(12); 163.568(2)(k); 768.28; 768.301 F.S.

EFFECTIVE DATE FOR REVISION:  11/05/2018
400.02 ADMINISTRATION

The following are applicable to each section of Chapter 400, whether or not referenced in such section or subsection:

(1) **Documentation.** Each claimed violation of any policy herein, any and all actions taken, the conclusion of any investigation and the conclusion of all administrative actions of any kind, shall be reported to the HART designated staff member or appointed officer designated to handle such violation. The designated staff member or appointed officer shall report any claim relating to financial and accounting matters to the HART Board Audit Committee and CEO when the complaint is received and when the file is closed. The Risk Manager shall report to the Litigation and Claims Committee, if litigation is anticipated.

(2) **Investigation.** The designated staff member or appointed officer shall notify the appropriate Department Manager(s), CEO, Head of Human Resources or other appropriate staff or seek assistance from the Human Resource Department and may request that the investigation be coordinated by the Risk Management Department or such other departments as maybe necessary.

(3) **Appeal.** Any HART policy violation, in this section, may be appealed to the CEO or CEO’s designee and such appeal is a condition precedent to any further action. Said appeal must be initiated by filing a written Notice of Appeal with the CEO or the CEO’s office within three (3) business days of the affected person’s receipt of notice (written or oral) of the decision or action. Said appeal shall be confined to a review of the record.
400.02 ADMINISTRATION (cont.)

created plus any additional evidence and argument submitted in writing. Said additional written evidence and argument must be received by the CEO’s office within ten (10) calendar days of the CEO’s office’s receipt of the Notice of Appeal. Failure to meet either deadline shall constitute a waiver of any and all rights to appeal or to contest any such decision or action. The CEO, or the CEO’s designee, shall render a decision within thirty (30) calendar days of a receipt of the full file, including any additional written evidence and argument. The finding shall be in writing and shall be provided to the appealing employee.

(4) False Accusations. Any employee who knowingly files a false complaint against a fellow employee will be subject to disciplinary action up to and including termination.

(5) Additional Remedies. All employees are encouraged to review Chapter 120 Florida Statutes (Administrative Procedures Act) and other applicable Florida and federal laws as they may have additional rights and remedies beyond those provided under these policies.

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.
Law Implemented: 112.3187(5); 112.3189; Chapter 120 et. seq.; 163.567(12); 163.568(2)(k); 768.28; 768.301 F.S.

EFFECTIVE DATE FOR REVISION: 11/05/2018

HART Clerk: [Signature]
400.03 APPLICATION PROCESS

(1) HART follows the Employee Application and Background Check processes established by Human Resources that are incorporated in the Employee Handbook.

(2) All employees accepted for hiring will be hired subject to clearing a drug and alcohol test, a background check, and any applicable physical examination.

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.
Law Implemented: 768.096, 163.567 (12); 163.568(2)(k) F.S.

EFFECTIVE DATE FOR REVISION: 11/05/2018
400: EMPLOYMENT POLICIES
400: GENERAL PROVISIONS

400.04 PRIOR EMPLOYMENT; BACKGROUND CHECKS

(1) The decision to consider an applicant for re-employment is at the discretion of the hiring manager, following a file review by Human Resources, and approval by the Division Director and Department Head. The Head of Human Resources will use a procedure consistent with this policy. HART will not rehire an employee in violation of Local, State, Federal or other applicable laws.

(2) All prospective employees will undergo a pre-employment background investigation as described in Florida Statutes §768.096 which will include: a criminal background check and a DMV check on their driver's license history.

(3) All new hires will undergo post-offer physicals and drug screening (if required for the position) in accordance with Federal Department of Transportation Regulation 391 and HART guidelines.

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.
Law Implemented: 768.096; 163.567(12); 163.568(2)(k) F.S.; Federal DOT Regulation 391

EFFECTIVE DATE FOR REVISION: 11/05/2018

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400: EMPLOYMENT POLICIES
400: GENERAL PROVISIONS

400.05 REDUCTION IN FORCE POLICY

(1) Policy Statement

The Hillsborough Transit Authority (HART) may conduct reductions in force as a result of budgetary constraints, organization restructuring, or business necessity.

(2) Purpose

The CEO or CEO's designee shall periodically set appropriate procedures to effectuate this policy.

Specific Authority: 120.52(l)(b); 163.568(2)(k) F.S.
Law Implemented: 120.52(l)(b); 163.568(2)(k) F.S.

PROPOSED EFFECTIVE DATE: 11/05/2018
410.01 PROFESSIONALISM AND PROFESSIONAL CONDUCT

(1) Policy Statement

Professional conduct is required to ensure that all employees promote a positive image of HART in the community and create a positive, productive work environment. Therefore, it is the policy of HART that all job-related activities be conducted consistent with professional standards, which respect both the integrity and dignity of individual employees and members of the public.

(2) Professional Standards

(a) Professionalism requires that all employees be responsible, reliable, sensitive, courteous, respectful and cooperative to and with each other and the public. All employees shall consistently behave in accordance with these expectations and carry out their responsibilities with integrity and impartiality while maintaining the necessary level of confidentiality required by applicable laws and policies. Professionalism also includes high standards of ethical conduct requiring that employees avoid any conflict of interest between HART duties, private activities and outside business interests and avoid speech or behavior that is likely to create an appearance of impropriety or hostility.

(b) Managers and supervisors shall provide timely advice and guidance to employees on ethics, policies, and compliance concerns. Managers and supervisors will lead by example, assure compliance with all laws and policies, encourage employees to seek advice before action, consult with the designated staff member or appointed officer, implement control measures to detect risks, and take prompt action to correct problems. Any doubt in interpreting and applying
these standards should be resolved by proceeding up the chain of command to seek guidance or clarification.

(3) Additional Specific Prohibitions

(a) Physical and Verbal Conduct

It is essential that HART maintain a cooperative work environment that fosters teamwork, collaborative problem solving and open communication through all levels of the organization. To achieve these standards, HART expressly prohibits any unwelcome physical or verbal conduct by any employee that substantially and unreasonably interferes with an individual’s work performance or behavior that a reasonable person would consider to be intentionally hostile and abusive. In addition, knowingly or recklessly making and/or perpetuating defamatory statements or publishing of false information concerning any customer, employee or other HART affiliated person and/or engaging in any other actions, for a malicious purpose is strictly prohibited.

(b) Physical Property

All HART employees are responsible for protecting the physical assets owned or leased by HART, such as facilities, equipment, and materials, from loss, theft or misuse. Misuse includes, but is not limited to, damaging or improper/abusive use of such physical assets as well as personal or non-HART related use, or permitting, participating or abetting such misuse or the theft of HART physical assets.

(c) Intellectual Property

All HART employees must respect valid patent rights, copyrighted materials, and other protected intellectual property rights of others by not reproducing, distributing or altering such materials without license or permission of the owner.
Computer and Other Information Systems

Based on an employee’s responsibilities, HART may provide employees with access to e-mail, computers, personal digital assistants, printers, fax machines, telephones, voicemail, wireless devices, other HART equipment and software. HART provides these systems to enhance employee efficiency and expects employees will use these tools for HART business. Employees who misuse information systems may lose access privileges. HART prohibits the use of the systems for certain activities, including but not limited to, any illegal activity, commercial or political uses, chain e-mail or virus hoaxes, harassing or threatening communications, intentional concealment of identity, any form of pornography, and excessive personal use. Such personal use shall be permitted only as incidental to and shall not interfere with the normal course of HART’s business and/or the employee’s work duties. Use of such systems, or HART’s other physical assets, for any business, investment or other outside activity, for profit or otherwise, in which an employee or contracting party is a member, shareholder, director, agent, representative, subcontractor or interested person is prohibited. Prohibited uses include, but are not limited to, political activities, fundraising, charitable endeavors and other personal efforts unrelated to such employee’s duties and responsibilities for HART.

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.


EFFECTIVE DATE FOR REVISION: 11/05/2018

HART Clerk: [Signature]
HILLSBOROUGH TRANSIT AUTHORITY
POLICY MANUAL

400: EMPLOYMENT POLICIES
410: PROFESSIONALISM
410.02 EMPLOYEE ETHICS AND CONFLICT OF INTERESTS

(1) Policy Statement

   (a) As a public agency, HART requires that all employees be law-abiding, honest and
   trustworthy. HART will accept nothing less than the highest standards of ethical conduct from its
   employees, consistent with the code of ethics of the State of Florida (Chapter 112, Florida Statutes)
   and the advisory opinions rendered in respect thereto ("State Ethics Code"). The requirements of
   the State Ethics Code establish the minimum requirements for all HART employees. HART
   policies and the HART Policy Manual establish other requirements that must be complied with by
   all employees even if more stringent than the requirements of the State Ethics Code. To the extent
   any employee is in doubt with regard to the applicable standard, they are obligated to discuss the
   matter with their immediate supervisor who shall pursue the matter up the chain of command as
   far as necessary to get a clear and direct answer.

   (b) HART prohibits employees from having direct or indirect interest, financial or
   otherwise, or to engage in any business transaction, charitable or professional activity or incur any
   obligation of any nature that is in conflict with or can impair the proper discharge of their public
   duties. Such conflict or impairment includes prohibited personal relationships between employees
   who are in a supervisory/subordinate relationship with one another. Such requirements are in
   employee policy and or standard operating procedures.

(2) Requirements

   (a) Political Activity

   Employees who intend to seek election to and hold public office shall notify the CEO of
   their intentions no later than the earlier of: (i.) commencement of fundraising; (ii.) campaign
committee formation; or (iii.) filing for office. If the CEO determines that the employee’s candidacy will interfere with the full discharge of the employee’s duties or that the employee’s holding public office will interfere with the full discharge of the employee’s duties, said employee will either resign from the employee’s position at HART or seek to obtain a leave of absence pursuant to HART Leave Policy, section 5.2 of the HART Employee Handbook. Unless otherwise provided pursuant to the existing leave of absence policy or pursuant to a collective bargaining agreement, such an employee shall not be guaranteed the ability to return to the position such employee holds at the time the employee decides to seek elective office, or any other position at HART. Unless specifically provided to the contrary in the leave of absence policy or in a collective bargaining agreement, such employee shall not be entitled to a leave of absence if the CEO makes a specific determination that granting such a leave would impose an undue hardship on HART.

(b) Conflicting Outside Interests

Employees may not engage in any outside professional, business or employment activity or have any financial or other personal interest, direct or indirect, which is incompatible or conflicts with the proper discharge of their official duties, would tend to impair independence of judgment or action in the performance of their duties or would interfere with the safe and proper performance of job responsibilities at HART or otherwise violate the standard of conduct for public employees identified under Florida Statutes §112.313. In no event shall such employee identify him or herself as an employee of HART or act in any manner which would confuse the public with regard to such employee’s capacity such that it is clear that such employee is not acting in any capacity as a

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representative or employee of HART in its separate professional, business or employment activities described herein.

(c) Disclosure Questionnaires and Statements

All HART employees are required to complete HART's Employee Disclosure Questionnaire and Statement form disclosing any outside business, professional or employment activity. Such form shall be reviewed and approved (or objected to) by the employee's supervisor and submitted to the HART Ethics Officer. All HART Chiefs and procurement employees are also required to file the Ethics Form I (Statement of Financial Interest) with the Florida Commission on Ethics and/or Supervisor of Elections, in accordance with state law. Other employees may be required to file the Ethics Form I as determined by the CEO and/or Ethics Officer and State law. Any relationship held by such employees that could be considered a potential conflict shall be disclosed as part of HART's Disclosure Questionnaire and Statement, including but not limited to, second jobs, professional or consulting activities, ownership of a business or rental properties, and/or having a business or financial interest in any corporation, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, trust, self-employment or otherwise doing business in Florida. It shall be sufficient to establish a business relationship by virtue of holding oneself as employed by or affiliated with any of the aforementioned entities irrespective of whether actual compensation has been paid.

(d) Questionnaire Updates

Employees shall also promptly complete a new Employee Disclosure Questionnaire and Statement and return it to the HART Ethics Officer if there is a change in an employee's potential or actual conflict of interest status any time during the course of their employment.
410.02 EMPLOYEE ETHICS AND CONFLICT OF INTERESTS (cont’d)

Failure to do so within 30 days of any change constitutes a violation of this policy.

(e) Soliciting or Accepting Gifts

(i) Pursuant to Section 112.313(2), Florida Statutes, no HART employee shall solicit anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor or service, when they know or with the exercise of reasonable care should know, that it is given to influence an official action.

(ii) No HART employee or Board Member shall accept any gift valued at more than twenty-five dollars ($25.00) from any source prohibited by Florida Statutes, Chapter 112 Code of Ethics or by FTA Circular C 4220.1F. Items below this value shall be considered to be not substantial. No procurement employee can accept any gift regardless of value from any source prohibited by Florida Statute, Chapter 112, FTA Circular C4220.1E, other applicable law or HART policy.

(iii) ‘Gift’ for purposes of this rule does not include: salary, expenses and other employment payments; awards, plaques or similar items given in recognition of service; items or personal favors obviously granted as a result of family or personal relationships; the value of a function which the employee or board member attends in his or her capacity with HART; participation in trade or professional

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association activities on behalf of and/or properly approved by HART; or campaign contributions as allowed by applicable law.

(iv) Certain employees shall also be required to file a Florida Commission on Ethics Form 9 (Quarterly Gift Disclosure) in accordance with FS §112.3148(4).

(f) **Post Employment Policy**

No employee shall do business with HART for a period of two (2) years after leaving HART’s employment.

(g) **Nepotism**

HART’s employees shall comply with Chapter 112 Section 3135 of the Florida Statutes, and all applicable interpretations there under, including the following:

(i) “A public official may not appoint, employ, promote or advance or advocate for appointment, employment, promotion or advancement, in or to a position in the agency in which he/she is serving or over which he/she exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted or advance in or to a position in an agency if such appointment, employment, promotion or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual or if such appointment, employment, promotion or advancement is made by a collegial body of which a relative
410.02 EMPLOYEE ETHICS AND CONFLICT OF INTERESTS (cont’d)

of the individual is a member...”

(ii) Public Officials, as defined by the law, include any HART employee who has been given the authority to appoint, employ, promote or advance individuals or to recommend individuals for appointment, employment, promotion or advancement in connection with employment at HART.

(iii) As designated by the law, a relative of a public official is “...an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother or half-sister.”

(h) Procurement Activities

During the time that HART is in the process of soliciting bids for goods or services, the procurement documents normally require interested parties to seek information solely from one designated person. No employee shall engage in communications with bidders or potential bidders outside of that process on the subject of a pending procurement.

(i) Disclosure and Consultation

Any employee who believes that they may possibly be facing a conflict of interest in the performance of their duties shall immediately disclose such possible conflict and should make an appointment and discuss the matter with the Head of Human Resources or Ethics Officer.

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If the Head of Human Resources or the Ethics Officer is the employee who believes that he or she may possibly be facing a conflict of interest, said employee shall make an appointment and discuss the matter with the CEO or the CEO’s designee. Failure to make such a disclosure may be considered evidence of a willful violation.
HILLSBOROUGH TRANSIT AUTHORITY
POLICY MANUAL

400: EMPLOYMENT POLICIES
410: PROFESSIONALISM
410.03 WORKPLACE THREATS AND VIOLENCE

(1) Policy Statement

The safety and security of HART's employees and customers is of paramount importance. Threats, threatening behavior or acts of violence against employees, visitors, guests, customers or other individuals by anyone on HART property (including vehicles) will not be tolerated. No existing HART policy, practice or procedure is intended to prohibit decisions designed to prevent a threat from being carried out, a violent act from occurring or a life-threatening situation from developing.

(2) Prohibitions

Persons are prohibited from making threats of violence, exhibiting threatening behavior or engaging in violent acts on HART property.

(3) Protective Orders

Employees who apply for or obtain a protective or restraining order against any HART employee or which pertains to HART property or locations, must provide to HART's Safety and Security Officer or designee or the employee's immediate supervisor or manager, a copy of the petition and declarations used to seek the order, a copy of any temporary protective or restraining order which is granted, and a copy of any protective or other order which is made permanent.

Any customer who complains of violence, aggression or threatening behavior from another customer or a HART employee shall be referred to HART's Safety and Security Officer or designee for review and investigation of such complaint. All employees have an obligation to

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assist in ensuring that our customers are protected from other customers and other HART employees and shall be obligated to report such an instance to HART's Safety and Security Officer or designee.

HART understands the sensitivity of the information requested and has developed confidentiality procedures, which recognize and respect the privacy of the reporting employee(s) or customer(s) to the fullest extent permitted by law. Violations of this policy by an employee will lead to disciplinary action up to and including termination or arrest and prosecution.

Should an employee file any document with a court or other government agency seeking protection from a fellow employee, a copy of said document and any notices of hearings should be served upon HART's Head of Human Resources or designee in the same manner as if HART were a party to the action. If the threatening employee is the Head of Human Resources or designee, a copy of said document and any notices of hearing should be served upon the CEO.

(4) Reporting Violations

(a) All HART personnel are responsible for immediately notifying the HART Safety and Security Officer or designee, their supervisor or any other available management representative of any threats, which they have witnessed, received or have been told that another person has witnessed or received. Even without an actual threat, personnel should also report any behavior they have witnessed which they regard as threatening or violent, when that behavior is job related or might be carried out on a HART controlled site or is connected to HART employment.
410.03 WORKPLACE THREATS AND VIOLENCE (cont'd)

Employees are responsible for making this report regardless of the relationship between the individual who initiated the threat or threatening behavior and the person or persons who were threatened or were the focus of the threatening behavior.

(b) The designated management representative is:

Safety and Security Officer or Designee
1201 E. 7th Avenue
Tampa, FL 33605
(813) 384-6600

(5) Immediate Response

HART will initiate an appropriate investigation and where probable cause exists will promptly escort the accused person(s) off HART property. HART may also contact appropriate police personnel under those circumstances where it has been alleged that a law has been violated or when such assistance is prudent to protect the safety and well-being of the various parties involved.

(6) Discipline

If the Safety and Security Officer or designee makes a determination that the complaint is valid, the Head of Human Resources or designee will initiate appropriate measures for resolution of the situation up to and including termination in accordance with HART's disciplinary policy and procedures or referral to the applicable police authority if appropriate.

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.
Law Implemented: 163.567(12); 163.568(2)(k) F.S.
EFFECTIVE DATE FOR REVISION: 11/05/2018

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400: EMPLOYMENT POLICIES
410: PROFESSIONALISM

410.3 USE, THREATENING USE OR POSSESSION OF UNAUTHORIZED WEAPON OR FIREARM

(1) Policy Statement

The safety and security of HART’s employees and customers is of paramount importance. The use and/or possession of an unauthorized weapon or firearm by anyone on HART property will not be tolerated, except as required by law.

(2) Prohibitions

The use, brandishing or threatening of another person with a weapon or a firearm or the possession of an unauthorized weapon or firearm, during the employee's work hours; or on HART property will not be tolerated.

(3) Definitions:

(a) A 'weapon' is defined as any device or instrument which is designed, redesigned, used or intended to be used for offensive or defensive purposes, the destruction of life or the infliction of bodily injury.

(b) An 'unauthorized weapon' is any weapon for which the possessor thereof has not previously obtained from the Safety and Security Officer or his or her designee written authorization for its possession; during the employee's work hours; or on HART property at any time.

(4) Reporting Violations

All HART personnel are responsible for immediately notifying their supervisor or any other available management representative of any knowledge they may have about the use, brandishing

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or threatening of another person with a weapon or firearm. Even without an actual threat, personnel should also report any information pertaining to the use or possession of an unauthorized weapon on HART property. Employees are responsible for making this report regardless of any relationship between the individual using or possessing an unauthorized weapon and the person or persons who were threatened or were the focus of the threatening behavior.

(5) Discipline

If the Safety and Security Officer or designee makes a determination that the complaint is valid, he/she will initiate appropriate measures for resolution of the situation up to and including termination in accordance with HART's disciplinary policy and procedures and/or notification of applicable law enforcement authorities.

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.
Law Implemented: 163.567(12); 163.568(2)(k) F.S.
EFFECTIVE DATE FOR REVISION: 11/05/2018
410.05 WORKPLACE DISCRIMINATION AND HARASSMENT PREVENTION POLICY

(1) HART is committed to providing a work environment that is free from sexual harassment as well as harassment and discrimination based on race, color, religion, creed, ancestry, national origin, age, sex, sexual orientation, gender identity or expression, disability or other status legally protected by federal or state law.

It is the responsibility of HART management to maintain a workplace that is free from unlawful discrimination including harassment. Supervisors and Managers are responsible for taking appropriate action to enforce the Workplace Discrimination and Harassment Prevention Policy. Harassment includes verbal, physical and visual conduct. Such conduct constitutes harassment when:

(a) the submission to the conduct is made an explicit or implicit condition of employment or

(b) submission to or rejection of the conduct is used as the basis for an employment decision or

(c) the harassment interferes with an employee's work performance or creates an intimidating, hostile or offensive work environment.

(2) The harasser may be an employee's supervisor, another employee, a customer, a vendor or another third party.

(3) Conduct which is sexually harassing or based on a person's protected status can take many forms and includes but is not limited to the following: slurs, jokes, statements, gestures, unwanted physical touching, impeding another's movement or otherwise physically interfering with another's

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work, pictures, drawings, cartoons or threats. This conduct can be through e-mail and other
electronic forms as well as through oral or written communications. Sexually harassing conduct in
particular includes all of these prohibited actions as well as other unwelcome conduct of a sexual
nature, such as requests for sexual favors, conversation containing sexual comments and sexual
advances.

(4) All HART employees are responsible for demonstrating appropriate conduct in the
workplace and are expected to adhere to the provisions of this Policy and contribute to a
harassment free work environment.

(5) Any employee who believes she or he has been subjected to sexual harassment or any
other form of harassment or discrimination should promptly report this to their Supervisor or
Manager or directly to the designated staff member or appointed officer. Every reported complaint
or harassment of discrimination will be investigated thoroughly and promptly.

(6) Retaliation against any employee for making a good faith complaint of harassment or
discrimination or for providing information related to such complaints will not be tolerated. Any
employee who, in good faith, believes that she or he is being retaliated against should report this
incident to the designated staff member or appointed officer. Such complaints will be promptly
and thoroughly investigated.

(7) An employee who violates this Policy on Preventing Discrimination and Harassment or
retaliates against an employee making a complaint under this Policy will be subject to disciplinary
action up to and including termination.

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400: EMPLOYMENT POLICIES
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410.05 WORKPLACE DISCRIMINATION AND HARASSMENT PREVENTION POLICY (cont’d)

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.

EFFECTIVE DATE FOR REVISION: 11/05/2018
400: EMPLOYMENT POLICIES
410: PROFESSIONALISM

410.06 EMPLOYEE WHISTLEBLOWER POLICY

(1) Policy Statement

It is the intent of HART to encourage the proper disclosure and reporting of violations of law, improper use of govern mental funds, and any other abuse or gross neglect on the part of HART, its public officers or its employees as defined by the Florida Whistleblower Act (Florida Statutes Sections 112.3187 - 1 12.31895).

(2) Requirements

No employee who is protected by the Florida Whistleblower Act shall be dismissed, disciplined or have any other adverse personnel action taken against him or her for disclosing such information, unless permitted by law.

(3) Notification and Reporting

(a) Any Employee who has personal or factual knowledge that an employee or HART official has violated any HART policy or has participated in any wrongdoing shall report, in writing any alleged violation or wrongdoing immediately to:

(i) Their direct supervisor(s), unless the Employee has reason to believe that their direct supervisor(s) are personally involved in the violation or wrongdoing; or

(ii) The designated HART staff member or appointed officer, unless the Employee has reason to believe that the designated HART staff member or appointed officer may be personally involved in the violation or
wrongdoing. Such notices/reports may be filed with the designated staff member or appointed officer; or

(i) If the Employee has reason to believe that their direct supervisor(s) and/or the HART designated staff member or appointed officer are personally involved in the violation or wrongdoing, then the Employee shall notify one or more of the agencies or persons as follows:

a. The CEO, if appropriate under Policy 400.01(7), and/or

b. The Board Secretary, on behalf of the Board, if appropriate under Policy 400.01(7), and/or

c. Law enforcement officials, if appropriate.

(b) All notices identified above shall be in writing. An e-mail or a facsimile transmission, with a confirmed receipt shall be considered an appropriate written notice.

(4) Confidentiality

A person submitting a written report requesting protection under this policy may request in that written report that their name and identity remain confidential. Such a request will be respected to the maximum extent permitted by law.

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.
Law Implemented: Chapter 112; 163.567(12); J 63.568(2)(k) F.S.
EFFECTIVE DATE FOR REVISION: 09/14/2015
420.01 EQUAL EMPLOYMENT OPPORTUNITY

(1) It is the continuing policy of HART to be an equal opportunity employer. HART recruits, hires and promotes qualified applicants and employees without regard to race, color, religion, creed, ancestry, national origin, age (over 40 years), sex, sexual orientation, marital status, veterans status, disability or other status protected by Federal or State law. This policy also extends to personnel actions such as compensation, benefits, transfers, layoffs, training, education reimbursement assistance, social and recreational programs, and terminations of employment.

(2) In order to make our commitment to Equal Employment Opportunity (EEO) a reality, positive steps are taken throughout HART to ensure that personnel actions are administered in a non-discriminatory manner.

(3) HART firmly believes in providing a work environment free from discrimination and/or harassment.

(4) The CEO shall designate the EEO/Affirmative Action Officer. The responsibilities of the EEO/Affirmative Action Officer include implementing and monitoring the Equal Employment Opportunity/Affirmation Action Plan (EEO/AAP), which annually documents employment practices at HART and develops target hiring goals based on estimated hiring needs and workforce availability. The EEO/Affirmative Action Officer also ensures that complaints of possible discrimination are investigated and that appropriate action is taken to ensure equal opportunities.

HART Clerk: [Signature]
Managers and supervisors are responsible for the success of HART’s commitment to Equal Opportunity and for Affirmative Action in their respective departments. The performance by managers and supervisors in implementing and supporting the goals and objectives of this policy is evaluated in the same manner as their performance is evaluated in achieving other HART goals. HART is committed to the achievement of EEO/AAP goals, which will increase diversity at HART and more fully utilize its human resources.

Employees or applicants who have questions or concerns about HART’s Equal Employment Opportunity Policy may contact the EEO/Affirmative Action Officer. Employees and applicants have the right to file formal complaints alleging discrimination by using the internal HART Equal Employment Opportunity/Affirmative Action complaint process. HART will not tolerate retaliation against employees for making a good faith discrimination complaint or for providing information related to such complaints.

Specific Authority: 120.52(1); 163.568(2)(k) F.S.
Law Implemented: 112.042; 163.567(12); 163.568(2)(k) F.S.; Equal Employment Opportunities Act of 1972, 42 USCA 2000e; Age Discrimination in Employment Act of 1967 (AEDA), 29 USA 621-634; Age Discrimination Act of 1975, 42 USCA 6101-6107; Civil Rights Act of 1964, 42 USCA 2000e-2(m); Americans with Disabilities Act of 1990 (ADA), 42 USCA 12111-12117

EFFECTIVE DATE FOR REVISION: 09/22/08
420.02 EMPLOYEES AND APPLICANTS – AMERICANS WITH DISABILITIES ACT (ADA)

(1) Policy Statement and General Procedures

(a) It is the policy and practice of HART to comply fully with the Americans with Disabilities Act and ensure equal opportunity in employment for all qualified persons with disabilities. HART is committed to ensuring non-discrimination in all terms, conditions and privileges of employment. All employment practices and activities, whether provided or conducted by HART, will be conducted on a non-discriminatory basis.

(b) HART’s recruiting, advertising and job application procedures have been reviewed and provide persons with disabilities meaningful employment opportunities. Pre-employment inquiries are made only regarding an applicant’s ability to perform the duties of the position, not any disabling condition.

(c) Pre-employment physical examinations are required only for those positions in which there is a bona fide job-related physical requirement, and are given to all persons entering the position only after conditional job offers. Medical records will be kept separate and confidential to the fullest extent permitted under law.

(d) Reasonable accommodation is available to all employees and applicants. Work sites will be accessible. All employment decisions are based on the merits of the situation in accordance with defined criteria and not the disability of the individual.

(e) All fringe benefits, whether provided or administered directly by HART, will be

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reasonably accessible to persons with disabilities. Training, apprenticeship programs, conferences, professional meetings, etc. will be available to all employees. Recreational and social activities sponsored by HART will be reasonably accessible to all employees.

(f) HART is also committed to not discriminating against any qualified employee or applicant because he or she is related to or associated with a person with a disability. HART will follow any state or local law or rule that provides individuals with disabilities greater protection than the Americans with Disabilities Act.

(g) This policy is neither exhaustive nor exclusive. HART is committed to taking all other actions necessary to ensure equal employment opportunity for persons with disabilities in accordance with the ADA and all other applicable federal, state and local laws.

(2) ADA Request for Reasonable Accommodation

(a) Impairment - HART will not discriminate against any otherwise qualified individual with a disability solely by reason of the impairment. Equal employment opportunities shall be provided to all applicants and employees without regard to disability. If applicants or employees with qualified disabilities are in need of reasonable accommodation(s), they have a duty to make said disabilities known to HART.

(b) Reasonable accommodation - Reasonable accommodation shall be provided for

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420.02 EMPLOYEES AND APPLICANTS – AMERICANS WITH DISABILITIES ACT (ADA) (cont’d)

the known qualified disabilities of an impaired applicant or employee unless an undue hardship or direct threat to health and safety or other job-related consideration exists and can be proven. HART will not deny employment opportunity to an employee or applicant with a qualified disability if the basis for denial is the need to make reasonable accommodation to the employee/applicant.

(c) Additional Information - For additional information or to request a reasonable accommodation(s), employees and applicants should contact HART’s Human Resources Department.

Specific Authority: 120.52(1)(b); 163.568(2)(k) F.S.
Law Implemented: 112.042; 163.567(12); 163.568(2)(k) F.S.; Americans with Disabilities Act of 1990 (ADA), 42 USCA 12111-12117

EFFECTIVE DATE FOR REVISION: 09/22/08

HART Clerk: [signature]
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430.01 DRUG AND ALCOHOL-FREE WORKPLACE POLICY

Policy Statement

Hillsborough Transit Authority (HART) is dedicated to providing safe and dependable transportation services to the public and maintaining a drug and alcohol free workplace for its employees. With both employee and public safety as its priority, HART has adopted a Drug and Alcohol Free Workplace Policy:

- To assure that employees are not impaired in their ability to perform assigned duties in a safe, productive and healthy manner;
- To create a workplace environment free from adverse effects of drug and alcohol abuse or misuse;
- To prohibit the unlawful manufacture, distribution, dispensation, possession or use of controlled substances in the workplace;
- To encourage employees to seek professional assistance any time personal problems, including alcohol or drug dependency, adversely affect their ability to perform their assigned duties.

HART’s Drug and Alcohol Free Workplace Policy applies to all safety-sensitive employees of HART in accordance with the identified federal regulations and to non-safety sensitive and safety-sensitive employees in accordance with the identified state law. Employees must abide by the Policy as a condition of employment.

Employment of any employee is contingent upon and subject to such employee passing a pre-employment drug and alcohol test. An employee who is convicted of any criminal drug statute for a violation occurring in the workplace shall notify the Designated Employer Representative no later than five days after such conviction. HART complies with all federal drug-free and alcohol-free workplace statutes and regulations as well as FTA regulations of anti-drug and anti-alcohol programs in the mass transit industry and applicable state law.

Any questions regarding the contents of this policy or other matters relating to HART’s anti-drug program and policies on the misuse of alcohol should be direct to the following:

Drug and Alcohol Program Manager or Designee
HART
4305 E. 21st Ave., Tampa, FL 33605
(813) 384-6404

HART maintains a third party Employee Assistance Program. Contact information is available at HART’s Human Resource Office and HART’s website @ www.gohart.org

HART Clerk: [Signature]
I. Drug and Alcohol Free Awareness Program

HART’s Board of Directors has established and formally adopted the following Drug and Alcohol Free Awareness Program in an effort to inform and educate employees in understanding the consequences of drug and alcohol misuse and abuse. It is HART’s intention to use this program in an on-going effort to prevent and eliminate drug and alcohol abuse that may affect the health and safety of our employees. This policy will be updated regularly by HART’s Drug and Alcohol Program Manager in conjunction with General Counsel, to reflect any changes in federal and state law. HART’s Board will annually certify compliance to the FTA that the requirements of 49 CFR 40 and 655 are being met by HART, including training and reporting. 49 CFR 655.14 and 655.72. Hereinafter 49 CFR will be omitted and referred to as 655 or 40, with the subsection designation following thereafter and Florida Statutes will be omitted and referred to as 440.101, 440.102 and 112.045. Any change in applicable law and regulations is automatically incorporated herein.

The Drug and Alcohol Free Awareness Program will inform employees about:

(a) the dangers of drug and alcohol abuse in the workplace;

(b) HART’s rules regarding use of alcohol and drugs;

(c) the availability of drug and alcohol treatment, counseling and rehabilitation programs;

(d) random drug and alcohol testing of safety-sensitive employees; and

(e) the penalties that may be imposed upon employees for drug and alcohol abuse violations.

As a recipient of federal funds, HART is required under federal law to include certain key elements to this policy. Those elements mandated by the Federal Transit Administration appear here in bold print and often include a numerical reference citation to the applicable federal regulation. Policies mandated under state law will include the applicable statutory reference and any policy provision not mandated by federal or state requirements will include no reference to any law or regulation. 655.82(a) and 655.8.3(c)

All applicants applying for, and all employees performing, safety-sensitive functions are subject to federally mandated provisions as identified in this policy and to the provisions of this policy not based upon, and not in conflict with, federal law. As part of HART’s Drug and Alcohol Free Awareness Program, HART shall display and distribute to all employees, the following: HART’s drug and alcohol free policies and procedures, and informational material and community service hotline telephone numbers for employee assistance. 655.16. In addition, HART shall provide employees with educational materials that explain the requirements of the FTA regulations and HART’s policies and procedures with respect to meeting those...
430.01 DRUG AND ALCOHOL-FREE WORKPLACE POLICY (cont’d)

requirements, including information concerning the effects of drug abuse and the misuse of alcohol on an individual’s health, work and personal life, signs and symptoms of a drug or alcohol problem, and available methods of intervening when a drug or alcohol problem (the employee’s or a co-worker’s) is suspected, including confrontation, referral to the Employee Assistance Program and/or referral to management. 655.14(a)

In accordance with the provisions of 49 CFR Part 655, employees shall receive at least sixty (60) minutes of training on the effects and consequences of prohibited drug use on personal health, safety and the work environment, and on the signs and symptoms which may indicate prohibited drug use. In addition, supervisors who may be asked to determine whether reasonable suspicion exists to require employees to undergo drug and/or alcohol testing shall receive at least sixty (60) minutes of training on the physical, behavioral and performance indicators of probable drug use, and sixty (60) minutes of training on the physical, behavioral, speech and performance indicators of probable alcohol misuse (655.14(b)) (644.14(2)).

II. Use of Alcohol

The following rules and restrictions regarding the use of alcohol apply to all safety-sensitive and non-safety sensitive HART employees and applicants for positions, which include safety sensitive functions. These restrictions apply to all employees while on duty, on call, on HART property – which includes private vehicles while parked on HART property and company vehicles at any time, on breaks, between shifts and at lunch if the employee is scheduled to work or may be assigned to work thereafter on the same day:

(a) no safety sensitive or non-safety sensitive employee shall report for duty while having an alcohol concentration of 0.04 or greater. 655.42 (e) and F.S. 440.101

(b) use of alcohol by a safety sensitive or non-safety sensitive employee, while on duty or when otherwise on HART property which includes use within private vehicles parked on HART property or use within any HART vehicle, at any time, is strictly prohibited. 655.32 and F.S. 440.101 use of alcohol by a safety sensitive or non-safety sensitive employee within 4 hours of reporting for duty is strictly prohibited 655.33(a) and F.S. 440.101

(c) use of alcohol by a safety sensitive or non-safety sensitive employee while on call is strictly prohibited. Any employee who is called in to report to duty and has used alcohol must advise his/her immediate supervisor that he/she has consumed alcohol within the prohibited time frame 655.33(b) and F.S. 440.101
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(d) all HART safety sensitive and non-safety sensitive employees are subject to and must submit to all authorized alcohol testing 655.42 and F.S. 440.101

III. Prohibited Substances/Unauthorized items/Arrests & Convictions

Prohibited Substances: Alcoholic beverages and drugs are prohibited in the workplace. Use of the drugs listed below is always illegal. For purposes of this policy, the term “drugs” includes marijuana, cocaine, opioids, amphetamines, phencyclidine (PCP) (653.21), barbiturates, benzodiazepine, methadone, methaqualone, or a metabolite of any of the substances listed herein as well as prescription drugs, except those authorized by and used in accordance with the directions of the employee’s physician. 440.102(1)(c).

Prohibited Substances Under Federal Guidelines: Safety-sensitive employees covered under federal regulations are subject to testing for the following drugs and their metabolites: marijuana, cocaine, opioids, amphetamines and phencyclidine (PCP). 655.21, and 40.3 “Drugs”

Unauthorized items on premises: Employees on duty may not have alcoholic beverage containers or drug paraphernalia (as defined in section 893.145 Florida Statutes) in their possession or otherwise transport any such item onto HART premises for any reason. Employees found to be in possession of such unauthorized items shall be issued disciplinary action up to and including dismissal.

Arrests & Convictions: Employees are required to report an arrest and conviction for any violation involving alcohol or prohibited substances to the Drug and Alcohol Program Manager within five (5) working days of said arrest and conviction.

Employees who fail to report an arrest or who are convicted of any such violation shall be subject to disciplinary action up to and including dismissal in accordance with the violation. 440.102(7)(d).

Specific Authority: 120.52(1)(b); 163.568(2)(k)


EFFECTIVE DATE FOR REVISION: 03/04/2019

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430.02 SUBSTANCE ABUSE PROGRAM POLICY

Policy Statement

Hillsborough Transit Authority aka HART is dedicated to providing safe, dependable, and economical transportation services to its patrons. HART employees are a valuable resource and it is also our goal to provide a safe, healthy and satisfying working environment for our employees. In meeting these goals, it is our policy to:

(1) Assure that employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthy manner;

(2) Create a workplace environment free from the adverse effects of drug and alcohol abuse or misuse;

(3) Prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances;

(4) Encourage employees to seek professional assistance when substance abuse adversely affects their ability to perform their assigned duties.

This Substance Abuse Policy implements a drug and alcohol testing program for all employees. Each employee shall be provided a signed copy of the adopted policy. *Policy items implemented under the authority of Hillsborough Transit Authority (HART) are italicized throughout this policy.* All other policy items are implemented under the authority of the United States Department of Transportation (US DOT) and/or the Federal Transit Administration (FTA).

*Per HART authority, violation of this substance abuse policy will result in termination of employment and/or exclusion from hire.*

This policy is approved by the HART Board of Directors and is effective on March 4, 2019

Name: Yelena Petit

Title: Clerk of the Board

Signature: [Signature] Date: 3-4-19

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430.02 SUBSTANCE ABUSE PROGRAM POLICY (cont’d)  

I. Background  

Pursuant to the Omnibus Transportation Employee Testing Act of 1991, the Federal Transit Administration (FTA) published regulations prohibiting drug use and alcohol misuse by transit employees and required transit agencies to test for prohibited drug use and alcohol misuse.

49 Code of Federal Regulations Part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations" mandates urine drug testing and breath alcohol testing for all employees in safety-sensitive positions. These regulations prohibit the performance of safety-sensitive functions when there is a positive drug or positive alcohol test result or an employee refuses to submit to DOT required drug or alcohol testing.

In addition, the U.S. Department of Transportation (DOT) has issued 49 CFR Part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" to provide uniform procedures and standards for conducting drug and alcohol testing programs. The drug and alcohol testing program of HART will be conducted in accordance with 49 CFR Parts 40 and 655, as amended. Employees may request copies of the applicable regulations by contacting HART designated employer representative listed in Section 25 of this policy.

II. Purpose  

This policy is established to comply with FTA drug and alcohol testing requirements to ensure employee fitness for duty, and to protect our employees, passengers, and the general public from the risks posed by the use of alcohol and prohibited drugs. This policy is also intended to comply with and incorporate 49 CFR Part 32, The Drug-Free Workplace Act of 1988, which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FTA, including the reporting of employees convicted of criminal drug offenses that occur in the workplace.

III. Covered Employees  

This policy applies to all safety-sensitive and non-safety sensitive transit system employees as identified and described herein. Paid part-time employees and contractors, when performing duties, are also covered by this policy when performing any HART related business. This policy applies to off-site lunch periods or breaks when an employee is scheduled to return to work. Additionally, this policy applies to volunteers who perform safety sensitive duties who are required to hold a Commercial Driver’s License, or who receive remuneration in excess of his or her actual expenses incurred while engaging in the volunteer activity. This written policy shall be distributed to all employees and applicable volunteers in safety-sensitive positions. Adherence to this policy
and its provisions are a condition of employment in a safety sensitive position; per 49 CFR Part 655.

Safety-Sensitive Employees and Applicants for Safety-Sensitive Positions covered by this Policy include those who:

1. Operate a revenue service vehicle, including when not in revenue service
2. Operate a non-revenue service vehicle when such is required to be operated by a holder of a commercial driver’s license
3. Control the movement/dispatch of a revenue service vehicle
4. Perform maintenance on a revenue service vehicle or equipment used in revenue service
5. Carry a firearm for security purposes
6. May perform any of the above safety sensitive functions in a supervisory or training role.

This policy is applicable to the following safety-sensitive positions within HART:

- All bus, van, flex operators
- Transit Supervisors
- Operations Controller
- Bus Transportation Manager
- Van/Flex Transportation Manager
- Maintenance Supervisors
- Service Attendants
- Mechanics
- Communication & Electronics Technicians
- Paint & Body Technicians
- Maintenance Training Instructor
- Fleet Service Supervisor
- Manager of Fleet Maintenance
- Transitway Supervisor
- Safety and Security Analyst
- Training Specialist
- Streetcar Operators
- Streetcar Mechanics
- Streetcar Service Attendants
- Streetcar Maintenance Supervisor
- Manager of Safety and Security

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➢ Manager of Transit Supervision
➢ Manager of Dispatch Control

IV. Prohibited Substances

In accordance with US DOT 49 CFR Parts 655 and 40, the following are prohibited substances:

• Cocaine
• Opioids
• Phencyclidine (PCP)
• Cannabinoids (Marijuana)
• Amphetamines (includes methamphetamine and MDMA- Ecstasy)
• Alcohol Misuse as defined in Section 23, below.

V. Prescription and Over the Counter Medications

The appropriate use of legally prescribed drugs and non-prescription medications are not prohibited. A legally prescribed drug means a prescription or other written approval from a physician for the use of a drug by an individual in the course of medical treatment. However, the use of any substance which carries a warning label that indicates mental functioning, motor skills, or judgment may be adversely affected must be reported to supervisory personnel and medical advice must be sought, before performing safety sensitive duties.

The misuse or abuse of legally prescribed drugs is prohibited; this includes the use of medication that is prescribed to another individual as well as illegally obtained prescription drugs.

HART strongly encourages employees to inform their prescribing physician of the safety-sensitive job functions that they perform, in order to ensure that appropriate medications are prescribed.

VI. Employee Protections

The procedures that will be used to test for the presence of prohibited substances or misuse of alcohol shall be such that they protect the employee’s privacy, the validity of the testing process and the confidentiality of the test results.

All urine drug testing and breath alcohol testing will be conducted in accordance with applicable with 49 CFR Part 40, as amended. All urine specimen collections, analysis and reporting of results shall to be in accordance with 49 CFR Part 40, as amended.
430.02 SUBSTANCE ABUSE PROGRAM POLICY (cont’d)

Drug and alcohol testing shall be conducted in a manner that will ensure the highest degree of accuracy and reliability using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Services (HHS).

Alcohol initial screening tests will be conducted using a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing Device (EBT) or non-evidential alcohol screening device that has been approved by NHTSA. Confirmatory tests for alcohol concentration will be conducted utilizing a NHTSA approved EBT.

1. Except as required by law or expressly authorized in this section, HART shall not release employee information that is contained in records maintained per 49 CFR Part 655.73.

2. An employee may, upon written request, obtain copies of any records pertaining to the employee’s use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substances tests.

3. HART shall release information regarding an employee’s records as directed, by the specific written consent of the employee authorizing release of the information to an identified person. Release of such information is permitted only in accordance with the terms of the employee’s consent.

4. Records pertaining to a Substance Abuse Professional’s evaluation, treatment and follow up testing results shall be made available to a subsequent DOT employer upon receipt of written consent from an employee.

VII. Employee Responsibility to Notify HART of Criminal Drug Conviction

It is a violation of this policy for any employee to fail to immediately notify HART of any criminal drug statute conviction, or a finding of guilt whether or not adjudication is withheld, or the entry into a diversionary program in lieu of prosecution. Violating employee shall be immediately removed from safety sensitive duties.

*Per HART authority, violation of this substance abuse policy will result in termination of employment and/or exclusion from hire.*

VIII. Employee Training

Safety-sensitive employees will receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.

Supervisors who make reasonable suspicion determinations shall receive at least 60 minutes of
training on the physical, behavioral and performance indicators of probable drug use and 60 minutes on the physical, behavioral and performance indicators of probable alcohol use.

IX. Pre-employment Drug and Alcohol Background Checks

In compliance with 49 CFR Part 40.25, HART must make a good faith effort to obtain drug and alcohol testing records from prior DOT covered employer(s) for the previous two years for all applicants seeking safety-sensitive positions and all current employees transferring into a safety-sensitive position. HART will require each applicant/transferee to a safety-sensitive position to complete a written consent that allows the release of drug and alcohol testing information from previous DOT covered employers to HART. An applicant/transferee who refuses to provide written consent will not be permitted to perform safety-sensitive functions for HART.

All safety-sensitive applicants who have previously failed a DOT pre-employment test must provide proof that they have completed a Substance Abuse Professional’s evaluation, treatment and return to duty process in addition to a pre-employment drug test with negative results, prior to their employment into a safety-sensitive job function. The credentials, training and education of the Substance Abuse Professional must meet the requirements of 49 CFR Part 40 Subpart O.

X. Pre-Employment Testing

All applicants shall undergo a urine drug test and breath alcohol test prior to placement in a position with HART. HART must be in receipt of a negative urine drug test and breath alcohol test result prior to the applicant’s performance of any function. A cancelled test result will require an applicant to undergo a subsequent pre-employment urine drug test, until a negative test result can be obtained.

If an applicant’s pre-employment urine drug test result or breath alcohol test is verified as positive, the applicant will be excluded from consideration for employment per HART authority. Applicant will be provided a referral to a Substance Abuse Professional meeting the required qualifications per 49 CFR Part 40.281, as amended.

An employee returning from an extended leave period of 90 consecutive days or more, and whose name was removed from the random testing selection pool, will be subject to a pre-employment urine drug test and breath alcohol test. HART must be in receipt of a negative drug test and breath alcohol test result prior to the employee being reinstated to safety sensitive duty.
XI. Random Testing

Employees in safety-sensitive positions shall be subject to random, unannounced testing. The minimum annual percentage rate for random alcohol testing and the minimum annual percentage rate for random controlled substances testing shall be in accordance with 49 CFR Part 655, as amended. The percentages of testing shall be based on the average number of safety-sensitive employees per calendar year.

The administering of random testing shall be spread reasonably throughout the calendar year and throughout all times of day when safety-sensitive functions are performed. Each covered employee who is notified of selection for random alcohol or drug testing shall immediately proceed to the testing site.

Random alcohol testing shall be conducted on a safety sensitive employee during, just before or just after the performance of a safety-sensitive function.

Random urine drug testing may be conducted anytime while an employee is on duty or on call, or on standby duty.

The selection of employees for random alcohol and drug testing shall be made by a scientifically valid method. The selection process shall provide each covered employee an equal chance of being tested each time selections are made. A computer based random number generator that is fair and equitable for the covered employees shall derive the list.

XII. Reasonable Suspicion Testing

All employees are subject to reasonable suspicion urine drug testing and/or breath alcohol testing. Reasonable suspicion testing is required when one or more trained company officials can articulate and substantiate physical, behavioral and performance indicators of probable drug use or alcohol misuse by observing the appearance, behavior, speech, or body odors of the employee. Reasonable suspicion testing for alcohol misuse can only be made when observations leading to that testing occur during, just preceding, or just after the period of the workday that the employee is required to be in compliance with FTA regulations. Reasonable suspicion testing for prohibited drugs may be conducted anytime an employee is on duty. Non-safety testing for both alcohol misuse and prohibited drugs may be conducted at all hours of operation.

XIII. Post-Accident Testing

Fatal Accident: A safety-sensitive employee shall be required to undergo urine drug and breath alcohol testing following an accident involving a revenue service vehicle that results in a fatality (regardless of whether or not the vehicle is in revenue service at the time of the event). Any other
employee(s), i.e., maintenance personnel, dispatchers, controllers, whose performance could have contributed to the accident, shall also be tested. As soon as practical following an accident involving the loss of human life, surviving covered employees shall undergo drug and alcohol testing.

**Non-Fatal Accident:** A post-accident test shall be conducted if an accident results in injuries requiring immediate medical treatment away from the scene, and/or if one or more vehicles incurs disabling damage that requires towing from a site; unless HART determines, using the best information available at the time of the decision, that the employee’s performance can be completely discounted as a contributing factor to the accident. Any other safety sensitive employee whose performance could have contributed to the accident shall be tested. The decision regarding whether or not the employee’s performance could have contributed to the accident will be the sole discretion of HART using the best information available at the time of the decision.

Following an accident, the employee must be “readily available” for testing. Post-accident tests will be conducted as soon as possible, all reasonable efforts shall be made to test the safety sensitive employee(s) within (2) two hours of the accident, but not after eight (8) hours for alcohol testing and thirty two (32) hours for drug testing. If a drug or alcohol test required by this section is not administered within the required time period following the accident, HART shall prepare and maintain on file, a record stating the reasons the testing was not promptly administered and efforts to conduct testing shall cease.

*Any employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident or until the employee undergoes a post-accident alcohol test.* Any employee, who leaves the scene of the accident without a justifiable reason or explanation prior to submitting to drug and alcohol testing, shall be considered to have refused the test.

The post-accident testing requirements shall not delay necessary medical attention for injured persons, nor will they prohibit an employee who was performing a safety-sensitive function from leaving the scene of an accident to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

In the rare event that an employee is unable to submit to a post-accident test within the required time period (i.e., 8 hours for alcohol and 32 hours for drugs) due to circumstances beyond HART’s control, the results of a blood, urine or breath alcohol test conducted by a federal, state or local official having independent authority for the test, will be considered to meet the requirements for a post-accident test. The test must conform to the applicable federal, state, or local testing requirements and the results must be obtained by HART. (Per 49 CFR Part 655.44)

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XIV. Discipline

(a) First Offense:

An employee with a first time positive confirmed drug test or an alcohol test of .02 or higher during his/her employment history with HART for a random test, will be placed on leave status for 90 days without pay. The employee may not use any accumulated sick leave or annual leave to cover his/her absence from work. During leave, the employee will be evaluated by HART’s Substance Abuse Professional and be required to participate in and successfully complete an employee assistance program, which will be at his/her own expense. In the event the employee is required to attend an employee assistance program which exceeds the employee’s 90 day leave under this section, the employee may file a request for additional leave with HART.

The following conditions shall also apply:

(1) The employee must successfully complete the employee assistance program. Failure to successfully complete the program will be evidenced by withdrawal from the program before its completion or a report from the program indicating unsatisfactory compliance or by a positive test result on a confirmation test after completion of the program.

(2) The employee must execute a written consent form allowing HART to obtain information regarding the progress and successful completion of the employee assistance program.

(3) Following successful completion of the program, the employee will be required to submit to a return to duty drug and alcohol test. 49 CFR Part 40 Subpart O. The employee may return to work only after the Substance Abuse Professional and have issued a written return to work release and the employee tests negative for all of the drugs screened.

(4) Upon return to work, the employee will be subject to unannounced follow-up drug and/or alcohol testing. 49 CFR Part 40 Subpart O. The number and frequency of such follow-up testing shall be as directed by the Substance Abuse Professional and will consist of at least 6 tests in the first 12 months following the employee’s return to work. §40.307. The Substance Abuse Professional may terminate the requirement for follow-up testing at any time after the first 6 tests have been administered, if the Substance Abuse Professional determines that such testing is no longer necessary. §40.307. Likewise, after the initial 12 month period, the Substance Abuse Professional may continue the follow-up testing for an additional 48 months if the Substance Abuse Professional determines that such testing is necessary. §40.307. Regardless of the number and frequency of follow-up testing, the employee will serve a twelve (12) month probationary period from the return to work date. If the employee
430.02 SUBSTANCE ABUSE PROGRAM POLICY (cont’d)

tests positive for drugs or alcohol during the probationary period or at any other time in the future, the employee shall be immediately terminated.

(b) Immediate Discharge shall occur in the following situations:

(1) **Refusal to submit to an authorized drug or alcohol test by failing to provide an adequate urine, breath, blood or saliva sample without a valid medical explanation, or by engaging in conduct that clearly obstructs the testing process.** §40.191 and §40.261. Refusal to submit to test also includes refusal to cooperate regarding the collection of samples, submission or attempted submission of altered or substituted urine sample or refusal to cooperate with laboratory personnel or Medical Review Officer during any stage of testing or confirmation process. An employee who refuses to submit to an authorized drug or alcohol test forfeits his eligibility for medical and indemnity benefits which would otherwise be due him/her under Florida Workers’ Compensation law.

(2) Refusal to participate in the employee assistance program, failure to execute a written consent form allowing HART to obtain information regarding the progress and successful completion of the employee assistance program or failure to successfully complete the program after being required to do so following a First Offense as outlined in subsection (a) above.

(3) Drinking alcoholic beverages or using drugs while on duty, on call, on HART property – which includes private vehicles while parked on HART property and company vehicles at any time, on breaks, between shifts and at lunch if the employee is scheduled to work or may be assigned to work thereafter on the same day.

(4) Distribution, dispensation, possession, concealment, sale or unlawful manufacture of drug paraphernalia, or any prohibited substance, including alcoholic beverages while on HART property, which includes use within private vehicles while parked on HART property or use within any HART vehicle at any time.

(5) When an employee test positive for alcohol with a concentration of 0.04 or more in any authorized pre-employment, reasonable suspicion, return to duty, follow-up or post-accident testing or when an employee tests positive for drugs in any authorized pre-employment, reasonable suspicion, return to duty, follow-up or post-accident testing regardless if it was the employee’s first time.

(6) When an employee tests positive for alcohol with a concentration of 0.04 or more in any authorized random alcohol test on more than one occasion or when an employee tests positive for drugs in any authorized random drug test on more than one occasion.
430.02 SUBSTANCE ABUSE PROGRAM POLICY (cont’d)

(7) When an employee tests positive for alcohol with a 0.04 or more concentration or positive for drugs following an occupational on-the-job accident, vehicular or otherwise, regardless of whether or not the test is the employee’s first positive confirmed result. Additionally, if the employee tests positive for drugs or alcohol at levels prohibited by the Florida Worker’s Compensation Statutes and applicable rules adopted pursuant thereto, the employee forfeits his eligibility for medical and indemnity benefits which would be otherwise due him/her under Florida’s Workers’ Compensation laws.

(8) When an employee tests positive for alcohol with a concentration of 0.04 or greater or tests positive for drugs (regardless of whether or not the test result is the employee’s first positive confirmed test result) and the employee’s conduct that led to the testing would justify dismissal if drug or alcohol use had not been involved.

XV. **Refusal to Submit to DOT Required Drug Testing**

All safety-sensitive employees will be subject to urine drug testing and breath alcohol testing as described in sections 10-13. An employee who fails to cooperate with the testing process or attempts to thwart the testing process will be considered to have “refused testing”. Refusal to submit to DOT required testing is a violation of this substance abuse policy.

The following actions constitute a “refusal to test” in accordance with 49 CFR Part 40, as amended:

(a) Failure to appear for any test within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer (pre-employment testing not applicable).

(b) Failure to remain at the testing site until the testing process is completed (after the process has been started)

(c) Failure to provide a urine specimen for any drug test required by this part or DOT agency regulations

(d) In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen

(e) Failure to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure

(f) Failure or decline to take an additional drug test the employer or collector has directed you to take

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430.02 SUBSTANCE ABUSE PROGRAM POLICY (cont’d)

(g) Failure to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by HART

(h) Failure to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector)

(i) For an observed collection, failure to follow the observer’s instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process

(j) Possessing or wearing a prosthetic or other device that could be used to interfere with the collection process

(k) Admitting to the collector or MRO that you adulterated or substituted the specimen

(l) When the MRO verifies your drug test result as adulterated or substituted.

Refusals to test will result in employee’s immediate removal from safety sensitive duties and a referral to a Substance Abuse Professional that has knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders, and who meets the qualifications outlined in 49 CFR Part §40.281 Subpart O.

Per HART authority, violation of this substance abuse policy will result in termination of employment and/or exclusion from hire.

XVI. Voluntary Rehabilitation

When an employee who has not previously tested positive for drug or alcohol use or entered an employee assistance rehabilitation program for drug or alcohol related problems voluntarily admits that s/he has a drug or alcohol problem prior to any order for drug/alcohol testing and requests help in receiving treatment for either drug or alcohol abuse, HART will meet with the employee to discuss the various treatment, counseling and rehabilitation options that are available. No disciplinary action will be taken against an employee who voluntarily admits that s/he has a drug or alcohol abuse problem. However, HART has the following rights in such circumstances:

(a) The employee will be required to be evaluated by the Employee Assistance Professional, to submit to testing and to enroll in and successfully complete a HART approved inpatient or outpatient treatment or rehab program for drug and/or alcohol abuse and remain drug and alcohol free for its duration, as a condition of continued employment or reinstatement with HART. The employee must use any accumulated sick leave and then annual leave to cover any absences from work.

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430.02 SUBSTANCE ABUSE PROGRAM POLICY (cont’d)

Upon program completion, the employee must submit to a return to work drug and alcohol test. The employee may return to work only after HART is in receipt of a clean test result and the Employee Assistance Professional has issued a written return to work release.

Upon return to work, the employee will serve a twelve (12) month probationary period from the date of return. If the employee tests positive for drugs or alcohol during the probationary period or at any other time in the future, the employee shall be immediately terminated.

XVII. Positive Confirmed Drug or Alcohol Test Result

(a) In accordance with Federal Law:

(1) A positive test result does not automatically identify an employee/applicant as having used drugs or alcohol in violation of HART policy. As such, the Medical Review Officer shall review the results prior to transmission of the results to HART officials in order to determine if there is a possible alternative medical explanation for the positive test results. §40.129

(2) The MRO shall directly and confidentially inform the employee or job applicant of the positive test result. §40.131 and FS 440.102(5)(h). The employee/applicant will then have the opportunity to provide evidence and an explanation to the MRO for the positive results. The employee will be notified that if he or she declines to discuss the test results, it will be verified as positive. The MRO will only report verified positive test results to HART if the test results are not explained to the MRO’s satisfaction. If the employee/applicant has unusual circumstances preventing him or her from responding to the MRO in a timely fashion, the MRO may provide some relief to the employee/applicant in accordance with 49 CFR 40.133(c). If the explanation is inadequate or not offered, the MRO will then report the verified positive test results to HART. HART shall then promptly inform the employee of the consequences of such results and the options available to the employee or job applicant after receipt of a positive verified test result from the Medical Review Officer.

(3) The MRO shall also advise the employee/applicant with a verified positive test that the employee/applicant has 72 hours to request a test of the split specimen. If the request is timely made, the MRO will inform the laboratory to provide the split specimen to another DHHS-certified lab for analysis. 40.153. If the second lab is unable to verify the test as positive, or if the split sample is unavailable, inadequate for testing or untestable, then the MRO shall cancel the test and report the test as
430.02 SUBSTANCE ABUSE PROGRAM POLICY (cont’d)

cancelled to HART and the employee/applicant. A cancelled test is neither a positive test or a negative test. 40.273. Likewise, if the split specimen analysis is positive, the MRO shall report these results to HART and the employee/applicant. 40 Subpart H.

(b) In accordance with state law:

(1) HART shall inform each employee or job applicant in writing of HART’s receipt of any positive test result on any tests performed on a specimen obtained pursuant to state law, (not federal law) the consequences of such results, and the options available to the employee or job applicant within five (5) working days after receipt of a positive confirmed test result from the Medical Review Officer. Upon request, HART shall provide the employee or job applicant, with a copy of the test results.

(2) An employee or job applicant may submit information to HART explaining or contesting the test result of any test performed pursuant to state law and explaining why the result does not constitute a violation of HART’s policy. If such an employee’s or job applicant’s explanation or challenge of the positive test result is unsatisfactory to HART, a written explanation as to why such an employee’s or job applicant’s explanation is unsatisfactory, along with the report of positive result, shall be provided by HART to such an employee or job applicant within fifteen (15) days; and all such documentation shall be kept confidential by HART and shall be retained by HART for at least one (1) year.

(3) Should such an employee or job applicant wish to do so, s/he may further contest the drug test result pursuant to the rules adopted by the Florida Department of Labor and Employment Security and incorporated by reference herein. Such an employee may also have the right to appeal to the Public Employee Relations Commission or appropriate court regarding any applicable collective bargaining agreement or contract. Such an employee or job applicant may undertake an administrative challenge by filing a petition for benefits with a judge of compensation claims, pursuant to Chapter 440 Florida Statutes or if no workplace injury has occurred, the person may challenge the test result in a court of competent jurisdiction. In the event such an employee or job applicant undertakes an administrative or legal challenge to a positive confirmed test result, that employee or job applicant must notify the laboratory which performed the drug test that such an action will be or has been instituted.

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HILLSBOROUGH TRANSIT AUTHORITY
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430.02 SUBSTANCE ABUSE PROGRAM POLICY (cont’d)

XVIII. Observed Urine Drug Collections

During an observed collection, the employee who is being observed will be required to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show the collector, by turning around, that they do not have a prosthetic device. The collector/observer must witness the employee’s urine leave the body and enter the collection cup. The collector/observer must be the same gender as the employee being observed.

Observed collections are required in the following circumstances:

➢ Anytime the employee is directed to provide another specimen because the temperature on the original specimen was out of the accepted temperature range of 90°F - 100°F;

➢ Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with;

➢ Anytime a collector observes materials brought to the collection site or the employee’s conduct clearly indicates an attempt to tamper with a specimen;

➢ Anytime the employee is directed to provide another specimen because the laboratory reported to the MRO that the original specimen was invalid and the MRO determined that there was not an adequate medical explanation for the result;

➢ Anytime the employee is directed to provide another specimen because the MRO determined that the original specimen was positive, adulterated or substituted, but had to be cancelled because the test of the split specimen could not be performed.

➢ Anytime a follow up or return to duty test is required (test types not applicable to HART policy)

XIX. Specimen Analysis

All specimens will be analyzed in accordance with the procedures set forth in 49 CFR Part 40, as amended. Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

XX. Dilute Test Results

Upon receipt of MRO verified negative-dilute drug test results with creatinine levels greater than 5 mg/dl and less than 20 mg/dl, HART will exercise the option to require that applicants/employees

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430.02 SUBSTANCE ABUSE PROGRAM POLICY (cont’d)

submit to a secondary urine collection as provided in 49 CFR Part 40.197. The collection of the second specimen will not be conducted under direct observation. The result of the second urine drug test will be accepted as the final result.

HART will exercise this option uniformly for all pre-employment and random tests that produce a negative-dilute test result with creatinine levels greater than 5mg/dl but less than 20mg/dl.

Upon receipt of a positive-dilute urine drug test result, HART will immediately remove the employee from safety sensitive duty and provide the employee with a referral to a DOT qualified Substance Abuse Professional. A positive dilute result is always deemed as a final positive result. Per HART authority, violation of this substance abuse policy will result in termination of employment and/or exclusion from hire.

XXI. Medical Review Officer’s Role and Responsibilities

The designated Medical Review Officer (MRO) shall be a licensed physician (doctor of medicine or osteopathy) with knowledge of drug disorders. HART shall use the following Medical Review Officer:

**Name of MRO:** Dr. Seth Portnoy

**Address:** 5646 West Atlantic Blvd

Margate, FL 33063

**Phone Number:** (888) 881-4826  
**Fax Number:** (954) 677-1701

The role of the MRO is to review and interpret confirmed positive test results obtained through the employer's testing program. In carrying out this responsibility, the MRO shall examine alternate medical explanations for any positive test result. This action may include conducting a medical interview and review of the individual's medical history, or review of any other relevant biomedical factors. The MRO shall review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication. The MRO shall not, however, consider the results of urine samples that are not obtained or processed in accordance with DOT regulations.

Additionally, the MRO cannot accept an assertion of consumption of a hemp food product as a basis for verifying a confirmed marijuana (THC) test result as a negative. Consumption of a hemp food product is not to be considered a legitimate medical explanation for a prohibited substance or metabolite in an individual's specimen.

An employee shall be notified by the MRO of a laboratory confirmed positive test and a verification interview will be conducted with the employee, by the MRO in accordance with 49 CFR Parts 40.131, through 40.141

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XXII. **Verified Positive Results**

MRO verified positive urine drug tests will result in immediate removal from duties and a referral to a Substance Abuse Professional that has knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders, and who meets the qualifications outlined in 49 CFR Part 40.281 Subpart O, will be provided to employee.

*Per HART authority, violation of this substance abuse policy will result in termination of employment and/or exclusion from hire.*

XXIII. **Cancelled/Invalid Test Results**

A drug test that has been declared cancelled by the Medical Review Officer, because the specimen was invalid or for other reasons, shall be considered neither positive nor negative. Additionally, a specimen that has been rejected for testing by the laboratory is reported by the MRO as a cancelled test.

When a negative urine drug test result is required (as is the case with pre-employment, return to duty and follow up test types) the employer must conduct another drug test on the individual. For some categories of cancelled drug tests, the MRO will indicate that a re-collection of a specimen using direct observation specimen collection procedures is required, regardless of test type. Direct observation collection procedures will be in accordance with 49 CFR Part 40.67 as amended. The MRO may also direct an employee to undergo a medical evaluation to determine whether or not clinical evidence of drug use exists when there are documented medical explanations for an individual producing invalid specimens and a negative result is needed for a pre-employment, return to duty or follow-up test.

For alcohol testing, a test that is deemed to be invalid per 49 CFR Part 40.267, shall be cancelled and therefore considered neither positive nor negative.

XXIV. **Split Specimen Testing**

Split specimen collection procedures will be followed in obtaining specimens. An employee is entitled to request, within 72 hours of learning of a verified positive test result, that the split specimen be tested at a different DHHS certified laboratory than that which conducted the test of the primary specimen. If the test result of the split specimen fails to reconfirm the presence of the drug or drug metabolite, the test result shall be ruled “Canceled”. The procedures for canceled tests, as outlined in 49 CFR Part 40.187, will be followed. If the test result of the split specimen is positive, the test results shall be deemed positive. If the laboratory’s test of the primary specimen
430.02 SUBSTANCE ABUSE PROGRAM POLICY (cont’d)

is positive, adulterated or substituted and the split specimen is unavailable for testing, a recollection under direct observation is required. Direct observation collection procedures will be in accordance with 49 CFR Part 40 as amended.

Split Specimen Testing is not authorized for test results reported by the MRO as “Invalid”.

XXV. Alcohol

For the purposes of this policy, alcohol is defined as the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol. Alcohol use means the consumption of any beverage, mixture, or preparation, including any medication containing alcohol. 49 CFR Part 655 authorizes alcohol testing and requires HART to take action on the findings, regardless of whether it was ingested as a beverage alcohol or in a medicinal or other preparation.

XXVI. Alcohol Use and Breath Alcohol Testing

No employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. If there is actual knowledge that an employee may be under the influence of alcohol while performing their duties, the employee shall not be permitted to perform or continue to perform their duties, pending a reasonable suspicion interview, conducted per Section 12. No employee shall use alcohol while performing their non-safety sensitive functions nor safety-sensitive functions, within (4) four hours prior to performing a function, or during the hours that they are on call or standby for duty. No employee shall use alcohol within eight (8) hours following an accident or until the employee undergoes a post-accident test, whichever occurs first.

A Breath Alcohol Technician (BAT) qualified to conduct DOT breath alcohol testing shall conduct all DOT required alcohol screening tests.

In accordance with the provisions of 49 CFR Part 40, as amended, the results of both the screening and confirmation of breath alcohol tests, as applicable, shall be displayed to the individual being tested immediately following the test(s).

The results of breath alcohol testing will be transmitted by the breath alcohol technician to HART in a confidential manner, in writing, in person, by telephone or electronic means in accordance with 49 CFR Part 40, as amended. All testing will be conducted consistent with the procedures put forth in 49 CFR Part 40, as amended.

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HART affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. Handling of tests and confidentially shall be in conformance with 49 CFR Part 40, and as described below:

If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. An employee who has a confirmed alcohol concentration of greater than 0.02 but less than 0.04 will result in removal from his/her position for (8) eight hours unless a retest results in a concentration measure of less an 0.02.

An alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy. An employee testing positive for alcohol will be immediately removed from duty and will be provided with a referral to a DOT qualified Substance Abuse Professional, in accordance with 49 CFR Part 40, as amended.

_Per HART authority, violation of this substance abuse policy will result in termination of employment and/or exclusion from hire._

XXVII. Refusal to Submit to DOT Required Alcohol Testing

The following actions constitute a refusal to submit to Alcohol Testing:

(a) Fail to appear for any test within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer.

(b) Fail to remain at the testing site until the testing process is complete

(c) Fail to provide an adequate amount of saliva or breath for any alcohol test required by this part or DOT agency regulations

(d) Fail to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure

(e) Fail to undergo a medical examination or evaluation, as directed by HART

(f) Fail to sign the certification at Step 2 of the ATF

(g) Fail to cooperate with any part of the testing process.

A referral to a Substance Abuse Professional that has knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders, and who meets the qualifications outlined in 49 CFR Part 40.281 Subpart O will be provided.

_Per HART authority, violation of this substance abuse policy will result in termination of employment and/or exclusion from hire._

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XXVIII. System Contacts

Drug and Alcohol Program Manager or Designated Employer Representative
Name: Kelli White
Address: 1201 East 7th Avenue, Tampa, FL 33605
Phone: (813) 384-6404
E-mail: whitek@gohart.org

Alternate
Name: Donna Allen
Address: 1201 East 7th Avenue, Tampa, FL 33605
Phone: 813-384-6429
E-mail: allend@gohart.org

Substance Abuse Professional
Name: CIGNA EAP
Phone: 1-877-622-4327

National Hot-Line Numbers and Help Lines:
1-800-COCAINEN

The American Council on Alcoholism Help Line
1-800-527-5344

The National Institute on Drug Abuse Hot Line
1-800-662 HELP

Alcoholics Anonymous
212-686-1100

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430.02 SUBSTANCE ABUSE PROGRAM POLICY (cont’d)

The referenced USDOT and FTA regulations, as well as informational material related to this testing program are available for review and/or download from the Florida Department of Transportation’s Substance Abuse Management Website: http://sam.cutr.usf.edu. Further information may be obtained from the USDOT’s Office of Drug and Alcohol Policy and Compliance website: https://www.transportation.gov/odapc and the Federal Transit Administration’s (FTA) website: https://transit-safety.fta.dot.gov/DrugAndAlcohol/Default.aspx.

Specific Authority: 120.52(1)(b); 163.568(2)(k)


EFFECTIVE DATE FOR REVISION: 03/04/2019

HART Clerk: [Signature]
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
600: ORGANIZATIONAL POLICIES
600: GENERAL

600.10 SCOPE AND PURPOSE

(1) The purpose of this Chapter 600 is to establish policies and general procedures for the safe, convenient and effective operation of HART services and facilities in order to best serve HART's patrons, the taxpayers and the general public.

Specific Authority: 120.52(1)(b); 163.568(2)(k) FS.
Law Implemented: 120.52; 163.568 FS.

PROPOSED EFFECTIVE DATE: 08/03/2015

HART Clerk: [Signature]
610.10 FARE STRUCTURE AND FARE CHANGE POLICY

(1) Policy

The purpose of this policy is to establish guidelines for fare structure and changes.

(2) Fare Structure

HART shall maintain a fare system, which is easy for riders to understand and is inexpensive and easy to administer. Basic adult fares are a feature of the fare structure. Premium fares can be charged for premium and express services, transfer fees may be charged, discounts may be established for youths, children, seniors, students, including adult students and people who are disabled. Shuttles and circulators may have fares less than the basic regular adult fare. The Board may establish tickets and passes in addition to cash fares, and they may have discounts based on riding frequency.

(3) Fare Recovery

The HART Board may set fare recovery goals from time to time which can be updated through the annual budget process. Passenger fares collected will be reported to the HART Board of Directors on a regular basis.

(4) Public Participation

(a) HART shall solicit and consider public comment before instituting any fare change except on experimental and emergency services.

(b) The HART Board of Directors shall conduct public hearings, as required by the appropriate federal and/or state law or regulations. HART may conduct such additional public hearings or meetings as the Board or the Chief Executive Officer deem to be appropriate.

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610.10 FARE STRUCTURE AND FARE CHANGE POLICY (cont’d)

information received from the hearings and other available sources, the Board may then authorize any fare changes, consistent with this policy.

(c) HART shall give reasonable notice and an opportunity for the public and HART customers to comment on proposed changes.

(d) HART accepts verbal testimony and/or written comments when public comment is not directly presented to the HART Board at a hearing or meeting by the public. Such comment will be presented to the Board in original or summarized form by staff for Board consideration.
610.20 ROUTE AND SERVICE MODIFICATIONS

(1) Policy

The purpose of this policy is to allow HART to make route or service changes, additions, or deletions to increase the efficiency and/or safety of transit/paratransit operations in order to attain the goals established by the HART Board of Directors. It shall be HART’s policy that there will be public involvement solicited in connection with:

- Route elimination
- New route creation
- Reorganization of a route in which 25% or more revenue miles are adjusted to a different route
- 25% or greater change in revenue hours and/or revenue miles
- 20% or greater passengers required to transfer to make current trip
- 25% or greater reduction in span
- Any fare change

(2) Public Participation

(a) The HART Board of Directors shall conduct public hearings, as required by the appropriate federal and/or state law or regulations. HART staff may conduct such additional hearings or meetings as the Board or the CEO deems to be appropriate. From information received from the hearings and other available sources, the Board may then authorize any route and service additions, deletions, or changes consistent with this policy.

(b) HART will solicit and consider public comment before instituting a major reduction or change in a route or service, or any permanent modification of existing routes or services as identified above. Two exceptions are experimental/pilot service and emergency services.

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ROUTE AND SERVICE MODIFICATIONS (cont’d)

(i) Experimental/pilot service is service that is provided on a trial basis in order to test out its operation or ridership.

(ii) Emergency service changes are changes in routes or service frequencies which may be necessitated due to a disaster which severely impairs public health or welfare and safety; changes in access to public streets (such as street closures) or the ability of HART vehicles to travel on public streets.

(c) HART shall give reasonable notice and an opportunity for the public and HART customers to comment on proposed changes by methods set forth under below:

(i) Mandatory Notification Process.
- For service changes and route modifications meeting public involvement criteria, a notice will be published in at least one local newspaper of mass circulation and on HART web site announcing HART proposed route or service change(s), the rationale for the changes, the availability of more detailed information and the period of time during which HART will accept comments;
- A public hearing will be authorized by the HART Board at least one month in advance of the public hearing and noticed to the public through the means set forth herein, at least two weeks before said public hearing;
- Notice will be posted at all HART Facilities.

(ii) Additional Notice may occur through:
- Review and comment by the public and report of the results to the Board and the public
- Running advertisements or additional notices in additional publications

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610.20 ROUTE AND SERVICE MODIFICATIONS (cont’d)

- Conducting Neighborhood/community based meetings
- Other cost-effective methods of reaching the same population.

(d) Public verbal testimony and/or written comments will be presented to the Board in original or summarized form by staff for Board consideration.

Specific Authority: 120.52(1)(b); 163.568(2)(k), F.S.
Law Implemented: 163.568; 286.011, F.S.

EFFECTIVE DATE FOR REVISION: 08/03/2015

HART Clerk: [Signature]
620.10 PUBLIC INFORMATION

(1) Policy

It shall be the policy of HART to make available or disseminate any and all non-privileged information of public interest relative to its operation.

(2) Procedure

In order that such information be as complete and accurate as possible, thereby assuring the public is knowledgeable of all the facts, HART has set forth the following procedure for distribution of all policy positions, statements and press releases or comments.

(a) Information requests from the media and/or general public shall be referred to the official spokesman as designated by the CEO.

(b) The Chair of the Board of Directors or the Chair’s designee, shall be the official spokesperson on all policy matters pursued or adopted by the Board.

(c) In the absence of the Chair, the Vice Chair shall be designated the official spokesperson.

(d) This is not to be construed as limiting Board members from making personal comment to the press or making personal response to public complaints such as occurs with elected officials who are appointed to the Board.

(e) The CEO of HART or his/her designee, shall be responsible for all press releases or public statements relative to the administration and operation of HART.
620.10 PUBLIC INFORMATION (cont’d)

(f) Information obtained from any individual other than those listed above shall not reflect the official position of the Board or the administration of HART.
630.10 ADA PARATRANSIT POLICY

(1) Policy

Section 223 of the Americans with Disabilities Act of 1990 (ADA) requires that public entities which operate non-commuter fixed route transportation services also provide complementary paratransit service within three quarters of a mile of all local, fixed routes for individuals unable to use the fixed route system. At a minimum, HART meets the requirements of the ADA and the regulations adopted pursuant to the Act.
640.10  CHARTER SERVICES POLICY

(1) Policy

HART complies with the Federal Transit Administration Final Rule 73 FR 2326 on Charter Services, including but not limited to the established exemptions and reporting regulations.

Specific Authority: 120.52(1)(b); 163.568(2)(k), F.S.
Law Implemented: 163.568, F.S.; 49 USC sec.5323(d); 49 CFR Part 604; 49 CFR 604.11

EFFECTIVE DATE FOR REVISION: 08/03/2015

HART Clerk:
PURPOSE, FUNCTION, AND SCOPE

The purpose of these policies is to clearly identify the function of the Risk Management Program. The function of the Risk Management Program includes risk evaluation, safety and loss control, investigation, claims management, environmental and occupational safety compliance, audits and internal affairs. Each individual involved in investigating, reporting or assisting any Risk Management activity is under the direction and authority of Risk Management, for these purposes, such that any related meetings and communications are, therefore, privileged and confidential to the maximum extent permitted by law.

Specific Authority: 120.52(1)(b); 163.568(2)(k), F.S.
Law Implemented: 163.568; 768.28; 768.301, F.S.

EFFECTIVE DATE FOR REVISION: 09/22/08

HART Clerk: [Signature]
720.01 PURPOSE

The purpose of the Settlement Policy set forth herein is to establish express levels of delegation of settlement authority and to outline the process of claims, investigations and handling.

Specific Authority: 120.52(1)(b); 163.568(2)(k), F.S.
Law Implemented: 163.568; Chapter 440; 768.28(1); 69.081 (8)(a), F.S.

EFFECTIVE DATE FOR REVISION: 11/05/2018

HART Clerk: [Signature]
720.02 SETTLEMENT POLICY

(1) Settlement of Workers’ Compensation Claims

(a) This settlement policy applies to all compensable workers’ compensation claims as defined by Florida Statutes 440. Workers’ compensation is the exclusive remedy for work-related injuries. With exception, employees are barred by law from suing their employers for negligence in a civil liability (tort) action.

(b) The Risk Manager is delegated the express authority to settle self-insured workers’ compensation claims or the self-insured portion of such decisions for amounts up to $50,000 with the written approval of one of the following: the CAO, CFO, CEO, or General Counsel.

(c) The Litigation and Claims Committee, composed of the CEO and/or the CEO’s designee; the CFO; the General Counsel; the Risk Manager; the Chair of the Board of Directors, or the Chair’s designee, and/or other member appointed by the Chair of the Board is delegated the express authority to settle such workers’ compensation claims for amounts greater than $50,000 and less than $100,000. Said decisions shall be by majority vote. Otherwise, any such settlement shall require Board approval. The Risk Manager shall make recommendations to the Litigation and Claims Committee. If at any time a conflict arises on any matter for a member of the committee, the committee member will abstain from voting on that matter.

(d) Settlements for amounts equal to or greater than $100,000 for such claims shall require Board approval following receipt of the written recommendations of the Litigation and Claims Committee.
700: RISK MANAGEMENT
710: SETTLEMENT POLICY

720.02 SETTLEMENT POLICY (cont’d)

(e) All such claim settlements for amounts greater than $50,000 shall be regularly and timely reported to the Board by the Risk Manager. Written settlement agreements may not include provisions which have the purpose or effect of concealing information from the public relating to the settlement or resolution of any claim or action per Florida Statute 69.081(8)(a).

(f) It is the policy of HART to encourage complete settlement of all claims submitted by one person at one time. In the case of multiple claims, wherein one or more claims fall outside of the claims described in 720.02(1)(a) and 720.02(1)(b), the Risk Manager and the Litigation and Claims Committee shall be fully informed of all pending claims of the same person, regardless of the nature of said claims. In such cases all claims which are under these subsections (a) and (b) shall proceed as set forth in these sections and the Risk Manager or the Litigation and Claims Committee, in accordance with this section may, in addition to any committee authorizations, also make a recommendation to the CEO; the CEO’s designee for a consolidated settlement of all claims.

(g) The limit on authorized settlement amounts set forth in this policy shall be determined by computing the aggregate total of any and all settlements on claims brought by an individual and settled within 90 days of the subject settlement, including any derivative claims for a spouse, and any claims described in this section of 700.
(2) Settlement of Third Party Tort Claims

This settlement policy applies to all claims in tort as defined by Florida Statutes 768.28(1), except for Workers' Compensation claims. Third party tort claims, for the purposes of this settlement policy, consist of any claim against HART for which Florida Statutes 768.28(1) permits liability. Such actions would include claims such as Bodily Injury, Property Damage, False Arrest, False Imprisonment, Invasion of Privacy, and Infliction of Mental Distress.

(a) The Risk Manager is delegated the express authority to settle such third party claims for Bodily Injury (BI), Property Damage (PD), and any other such actions in Tort for amounts up to $50,000 with the written approval of one of the following: the CEO, CFO, or General Counsel.

(b) The Litigation and Claims Committee, composed of the CEO and/or the CEO's designee; the CFO; the General Counsel; the Risk Manager; the Chair of the Board of Directors, or the Chair's designee and/or other member appointed by the Chair of the Board, is delegated the express authority to settle Bodily Injury, Property Damage, and all other such claims for amounts greater than $50,000 and less than $100,000. Said decisions shall be by majority vote. Otherwise any such settlement shall require Board approval. The Risk Manager shall make recommendations to the Litigation and Claims Committee. If at any time a conflict arises on any matter for a member of the committee, the committee member will abstain from voting on that matter.

(c) Settlements for amounts equal to or greater than $100,000 for such claims shall require Board approval following receipt of the written recommendations of the Litigation and Claims Committee.
(d) All such claim settlements for amounts greater than $50,000 shall be regularly and timely reported to the Board by the Risk Manager. Written settlement agreements may not include provisions which have the purpose or effect of concealing information from the public relating to the settlement or resolution of any claim or action per Florida Statute 69.081(8)(a).

(e) It is the policy of HART to encourage complete settlement of all claims submitted by one person at one time. In the case of multiple claims, wherein one or more claims fall outside of the claims described in 720.02(2)(a) and 720.02(2)(b), the Risk Manager and the Litigation and Claims Committee shall be fully informed of all pending claims of the same person, regardless of the nature of said claims. In such cases all claims which are under these subsections (a) and (b) shall proceed as set forth in these sections and the Risk Manager or the Litigation and Claims Committee, in accordance with this section may, in addition to any committee authorizations, also make a recommendation to the CEO, or the Executive Director CEO's designee, for a consolidated settlement of all claims.

(f) The limit on authorized settlement amounts set forth in this policy shall be determined by computing the aggregate total of any and all settlements on claims brought by an individual and settled within 90 days of the subject settlement, including any derivative claims for a spouse and any claims described in 720.06(a), 720.06(b) and 720.06(c).
(3) Settlement of Other Claims

(a) This settlement policy applies to all claims for which HART may be liable on a basis other than under worker’s compensation or tort law, as described in 720.02(1) and 720.02(2). Such applicable actions would include claims based upon Contractual Obligations, Equal Employment Opportunity, Americans with Disability Act, Employee Grievances, Sexual Harassment laws, Public Records laws, and Government-in-the-Sunshine laws.

(b) The Risk Manager is delegated the express authority to settle such claims for amounts less than $50,000 with the written approval of one of the following: the CEO, or the CFO or General Counsel.

(c) The CEO is delegated the express authority to settle such claims which are not described in 720.06(a) and 720.06(b) for amounts less than $100,000 with the written advice of the General Counsel.

(d) The Board shall approve all settlements of claims which are outside the claims described in 720.02(3)(a) and 720.02(b) equal to or greater than $100,000 only after receiving written recommendations from the CEO, CFO and General Counsel.

(e) All such claim settlements for amounts greater than $50,000 shall be regularly and timely reported to the Board by the Risk Manager. Written settlement agreements may not include provisions which have the purpose or effect of concealing information from the
700: RISK MANAGEMENT
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720.02 SETTLEMENT POLICY (cont’d)

public relating to the settlement or resolution of any claim or action per Florida Statute 69.081(8)(a).

(f) It is the policy of HART to encourage complete settlement of all claims submitted by one person at one time. In the case of multiple claims, wherein one or more claims fall outside of the claims described in 720.02(1) and 720.02(2), the Risk Manager and the Litigation and Claims Committee shall be fully informed of all pending claims of the same person, regardless of the nature of said claims. In such cases all claims which are under these subsections (a) and (b) shall proceed as set forth in these sections and the Risk Manager or the Litigation and Claims Committee, in accordance with this section may, in addition to any committee authorizations, also make a recommendation to the CEO, or the CEO’s designee, for a consolidated settlement of all claims.

(g) The limit on authorized settlement amounts set forth in this policy shall be determined by computing the aggregate total of any and all settlements on claims brought by an individual and settled within 90 days of the subject settlement, including any derivative claims for a spouse and any claims which are outside the claims described in 720.02(1) and 720.02(2).

(h) To the extent HART has any claim against any person(s) or entity, the authority for settlement of said claim(s) shall be in accordance with the authorizations set forth in this section.

Specific Authority: 120.52(1)(b); 163.568(2)(k), F.S.
Law Implemented: 163.568; Chapter 440; 768.28(1); 69.081(8)(a), F.S.

EFFECTIVE DATE FOR REVISION: 11/05/2018

HART Clerk: [Signature]
HILLSBOROUGH TRANSIT AUTHORITY
POLICY MANUAL

800: MISCELLANEOUS POLICIES
810: ADVERTISING POLICY

810.10 ADVERTISING POLICY

(1) Policy Statement

HART is engaged in commerce as a provider of public transportation services and the advertising space located on its public information pieces, buses, stops or other HART property constitutes a part of this commercial venture and is not intended to be and shall not be considered a public forum. The advertising accepted is intended to be strictly commercial in nature as further defined herein with limited Governmental Entity Public Service Announcements, as that term is defined below, including but not limited to HART’s own such announcements. HART’s objective in selling advertising on or in its vehicles or property is to maximize advertising revenues to supplement un-funded operating costs, while maximizing transit services revenue by attracting, maintaining and increasing ridership. Maintaining a safe, welcoming environment for all HART passengers is part of HART’s primary mission and is essential to maximizing revenues to accomplish that mission. The advertising revenues are secondary to HART’s primary mission. HART intends to maximize advertising revenue by establishing a favorable environment to attract a lucrative mix of commercial advertisers. The goal is to maintain the value of HART advertising space by keeping it in good condition and non-controversial at the same time, endeavoring to ensure that the advertisement is not offensive to HART customers and the community.

(2) Advertising Program and Administration

HART shall select an “Advertising Contractor” responsible for the administration of the HART advertising program consistent with HART’s adopted policies and guidelines and its agreement with HART. HART shall designate an employee as its “Contract Administrator” to be the primary contact with the Advertising Contractor. The Advertising Contractor shall be the

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recipent of all advertising requests and shall be the one who initially addresses the application of HART guidelines thereto. Any question or disagreement in that regard shall be referred to the Contract Administrator for resolution. The Contract Administrator shall determine whether the advertisement in question is consistent with these policies and guidelines. Any determination by the Contract Administrator that the advertising request is not consistent with these policies and guidelines must be in writing and sent to applicant at the address provided by the applicant. The Contract Administrator’s opinion must state the basis for finding the advertisement in question not in compliance, including the policies and guidelines with which the advertisement in question does not comply. If a dispute remains unresolved, appeal may be made to the CEO or Chief Operating Officer of HART or his/her designee for final resolution. Any request for review must be in writing and must be received within thirty (30) days of any written decisions by the party who’s determination is being appealed. Such request must state the basis for the view that the rejection was not consistent with HART guidelines and policies including identification of the guideline or policy at issue and the nature of the inconsistency. The CEO or his/her designee shall determine whether the handling of the advertisement in question is consistent with the advertising policy and guidelines and shall render an opinion in writing sent to the address of the applicant as provided by the applicant indicating that the advertisement in question is consistent with the guidelines and policies or, if not, the basis for his opinion including the policies and guidelines supporting that denial.
810.10 ADVERTISING POLICY (cont’d)

(3) Guidelines

(a) All advertising must meet the guidelines provided herein and shall as a minimum meet those standards governing broadcast and private sector advertising with respect to good taste, decency and community standards. That is, the average person applying contemporary community standards must find that the advertisement, as a whole, does not appeal to a prurient interest. The advertisement must not describe, in a patently offensive way, sexual conduct or contain messages or graphic representations pertaining to sexual conduct.

(b) Any advertising, which demeans or disparages an individual or group, is prohibited. In making any such determination the test will be whether the advertisement in question contains material that ridicules or mocks, is abusive or hostile to, or debases the dignity or stature of, an individual or group.

(c) The advertisers and/or any outside Advertising Contractor will indemnify and hold harmless HART from any and all claims brought as a result of the display of an advertisement.

(d) “Commercial Advertisement” shall mean an advertisement dealing with commercial speech which is an expression that proposes a commercial transaction or provides information about a potential commercial transaction related solely to an economic interest of the speaker and his or her audience, but which is intended to influence consumers in their commercial decisions and usually involves advertising products or services for sale.

(e) “Governmental Entity Public Service Announcements” are announcements or information provided by any governmental entity, governmental agency or quasi-governmental
810.10 ADVERTISING POLICY (cont’d)

entity in furtherance of its functions, objectives and/or public responsibilities.

A governmental entity is a state, county or municipality or any agency, department, commission, authority, or board created for the purpose of carrying out any functions of the state, county or municipality or any other entity created by statute or ordinance or created pursuant to a statutorily authorized process, such as special districts or the like to carryout, implement or monitor any governmental function whether it be proprietary, regulatory, administrative, educational or otherwise related to the public health, safety or welfare.

(4) Prohibitions

The following types of advertising are prohibited in and on all vehicles and/or property:

(a) Except as provided with regard to the Tampa Historic Streetcar, advertising of tobacco, alcohol, or related products or activities;

(b) Advertising containing profane language, obscene materials or images of nudity, similar adult themes, activities or products, including, but not limited to, pornography and any message offensive to the community standards applicable to same;

(c) Advertising containing discriminatory materials and/or messages;

(d) Advertisements for firearms or that contain an image or description of graphic violence, including but not limited to (i) the description of human or animal bodies or body parts, or fetuses, in states of mutilation, dismemberment, decomposition, or disfigurement; and (ii) the depiction of weapons or other implements or devices used in the advertisement in an act or acts of violence or harm to a person or animal.

(e) Advertisements that primarily promote a religious faith or religious organization;

HART Clerk:___________
(f) Partisan political advertisements which advocate any political party, or advocate and/or promote any candidate or issue upon which the electorate is scheduled to vote, speech that refers to a specific ballot question, initiative petition, or referendum or seeks to promote the initiation of same;

(g) Advertisements that promote or have any material contained in it, that promotes, encourages or appears to promote or encourage, unlawful or illegal behavior or activities;

(h) Advertisements that propose a commercial transaction that has any material contained in it that is false, misleading or deceptive;

(i) Advertisements, or any material contained therein that promotes or encourages or appears to encourage or promote the use or possession of unlawful or illegal goods or services; and

(j) Advertisements or any material contained therein that is libelous or an infringement of copyright, or is otherwise unlawful or illegal or likely to subject HART to litigation.

(5) Advertising on Behalf of Tampa Historic Streetcar, Inc. (THS)

Advertising on behalf of THS that promotes local economic growth and tourism relating to the cigar industry and the hospitality industry through alcohol beverage sales, including sales by both regional and national alcoholic beverage companies, shall be exceptions to the prohibition of tobacco and alcohol advertising, provided that the advertisements meet the requirements in this paragraph, and all other advertising requirements.

Alcohol and cigar advertisements for use on THS or associated stops will be considered on a case by case basis by the HART CEO or his/her designee under this advertising policy. Alcohol and cigar advertisements will not be accepted if the images, text and/or messages contained in the
advertisements depict or imply underage or otherwise illegal use of the products, depict or imply paraphernalia for use of the products, or depict or imply consumption or other use of these products by any specified or implied person or groups of persons or violate any applicable Federal, State or local government prohibition governing same. All alcohol advertising must also display a responsible drinking message.

(6) Non-endorsement

Allowing advertisements does not constitute an endorsement by HART (or any of its partners, such as THS) of any of the products, services or messages so advertised. Advertisements may not contain any message stating or implying endorsement by HART (or any of its partners) of any of the products, services or messages so advertised, unless authorized in writing and so stated within the advertisements. HART reserves the right in all circumstances to require any advertisement to contain a disclaimer indicating that it is not sponsored by, and does not necessarily reflect the views of HART.

(7) Other Restrictions

The HART CEO or his/her designee shall set forth additional restrictions and/or requirements by means of RFP requirements, contract provisions, specifications and otherwise, to include materials utilized, application methods and that reflective materials be integrated at a minimum running horizontally in the mid part of the sides of the buses.

Specific Authority: 120.52(1)(b); 163.568(2)(k), F.S.
Law Implemented: 163.568, F.S.

EFFECTIVE DATE FOR REVISION: 11/05/2018

HART Clerk: ________
The purpose of this Chapter 900 is to establish policies and general processes for financial activities pertaining to the handling of money and/or the accounting of HART finances.

Any employee who violates any provision of this Chapter 900 will be subject to discipline, up to and including discharge.
FISCAL SUSTAINABILITY

(1) Definition

Fiscal sustainability is achieved when service and infrastructure levels and standards are delivered according to a long-range plan without the need to reduce services, delay construction, or increase rates on an emergency or unplanned basis. It emphasizes long-range financial planning that shifts the attention to strategic goals of the agency and away from a one-year budget perspective. Continuing revenue sources will be used to support continuing operating needs, and one-time or highly volatile revenue sources will support specific non-recurring projects.

(2) HART’s Plan for Fiscal Sustainability

HART is committed to developing and following financial policies that will allow it to achieve its strategic goals and support its Transit Development Plan (TDP). In order to achieve these goals and fulfill its commitment to its Charter members, HART relies on just a few major sources of continuing revenue to support its ongoing operations and capital programs which include property taxes, fare revenues and grants.

In order to achieve fiscal sustainability, HART is emphasizing long-range planning to position itself to maintain current service levels, addition of new service and routes, and to sustain its capital improvement program.

To ensure HART’s financial sustainability, the following financial principles are incorporated into the annual budget, and will continue to be in future planning:

(a) HART will develop budgets that are transparent and clearly specify all sources of revenue and related uses;
(b) HART will lay out a five-year strategic plan for operations, capital and revenue, that discloses major assumptions regarding financial trends;
(c) Continuing operations will be supported by continuing revenue. Any increases in operating and ongoing expenses will be limited to the amount of increases in continuing revenue; one-time revenue sources will be directed to special needs only; and
(d) Capital proposals will be evaluated to determine that HART has the resources to operate and maintain the related projects for the long term.
920.10 GENERAL POLICY ON BUDGETING

(1) Pursuant to HART Charter, the operating budget authorizing expenditure of HART funds will be adopted annually by the Board of Directors and presented in a multi-year format to include long-term planning and will be considered statutory spending authorization.

(2) HART Finance Department shall estimate 95 percent of all ad valorem receipts reasonably anticipated pursuant to §F.S. 129.01(2)(b).

(3) Non-recurring items are funded from non-recurring sources, usually fund balance and/or grants, when approved by the Board of Directors, and recurring budget items are funded from recurring sources.

(4) The annual operating budget of HART shall balance the public transit needs of the community with the fiscal capabilities and resources available to HART, with its intent to achieve the goals and objectives established by the HART Board for the following fiscal year and pursuant to the Transit Development Plan (TDP).

(5) HART recognizes that its citizens deserve a commitment from HART for fiscal responsibility, and that a balanced operating budget is the cornerstone of that responsibility. Annual operating expenses will be fiscally balanced with revenues or income estimates that can reasonably and normally be planned to be received during the fiscal year. New programs or changes in policies which would require the expenses of additional operating funds will either be funded through reductions in existing programs of lower priority or through adjustments to fees, service charges, or taxes. Requests for new, or changes to programs or policies will be accompanied by an analysis of the short- and long-term impact on the operating budget caused by the recommended changes.

(6) New programs, services, or facilities shall be based on general citizen demand or need and/or Board direction and amended to the TDP.

(7) HART shall prepare and implement a Capital Improvement Budget which shall schedule the funding and construction of projects for a five-year period. The CIP Program shall balance the needs for improved public facilities as identified in HART TDP.

(8) HART shall provide funding for public services on a fair and equitable basis, and shall not discriminate in providing such services on the base of race, sex, color, religion, national origin, or physical limitation.

(9) Budgets for all HART departments and all other HART expenses shall be under HART Board appropriation control.

HART Clerk: [Signature]
920.10  GENERAL POLICY ON BUDGETING (cont’d)

(10) Preparation of HART budget shall be in such a format as to allow correlation with the costs reported in HART Comprehensive Annual Financial Report (CAFR) and prepared in anticipation of submission to the Government Finance Officers Association (GFOA) for evaluation and review.
920.20 BASIS OF BUDGETING AND ACCOUNTING

(1) The preparation, approval, adoption, and execution of HART budget are in compliance with Florida Statute (Chapter 189) and is comprised of an operating and capital component with appropriations adopted for the current fiscal year only. However, a five-year financial plan is prepared for strategic planning purposes.

(2) HART is an Enterprise Type Activity, as defined by Governmental Accounting Standards Board (GASB) Statement No. 34, Basic Financial Statements – Management's Discussion & Analysis – for State and Local Governments and its financial statements are presented on the accrual basis of accounting. Under this method, revenues are recognized when they are earned, and expenses are recognized when they are incurred. Grants are recognized as revenue as soon as all eligibility requirements imposed by the grantor have been met.

(3) Enterprise funds distinguish operating revenues and expenses from non-operating items. Operating revenues and expenses generally result from providing services in connection with the fund's principal on-going operational activities. Charges to customers represent HART's principal operating revenues and include passenger fares and revenues from use of its non-capital assets for advertising, right-of-way activities, etc. Operating expenses include the cost of operating, maintaining, and supporting transit services, administrative expenses, and depreciation. All revenues and expenses not meeting this definition are reported as non-operating or “other” revenues and expenses.

(4) The CAFR shows the status of HART finances on the basis of GAAP. In most cases, this conforms to the way HART prepares its budget. One exception is the treatment of unpaid vacation and sick leave accumulated by employees. The entire unpaid liability for vacation and sick leave is recorded in the Statement of Net Position in the CAFR, whereas the current liability of employees is budgeted as an appropriation in the year when it is expected to be expensed.

(5) Specific accounting and reporting practices:

(a) Maintain accounting and reporting practices in conformance with the Uniform Accounting System of the State of Florida and GAAP;

(b) Maintain accounting system records on a basis consistent with the accepted standards for local government accounting according to Governmental Accounting and Financial Reporting (GAFR), and the Governmental Accounting Standards Board (GASB);
(c) The preparation of financial statements in conformity with GAAP, as applicable to governmental units, requires management to make use of estimates or accruals that affect the reported amounts in the financial statements. Actual results could (and most likely, will) differ from estimates;

(d) Provide regular monthly financial statements to the HART Board of Directors and the public that include all expenditures and revenues;

(e) Pursuant to HART’s Charter, ensure that an annual financial and compliance audit of HART’s financial records is conducted by an independent firm of Certified Public Accountants whose findings and opinions are published and available for public review;

(f) Maintain a continuing program of internal audits;

(g) Annually seek the GFOA Certificate of Achievement for Excellence in Financial Reporting and the GFOA Annual Distinguished Budget Presentation Award.
920.30 BUDGET PROCESS AND CALENDAR

(1) Overview of Budget Development

(a) Each year, the Chief Executive Officer sets forth the procedures and guidelines to be followed by departments in developing budget requests for the following fiscal year. Departmental budget requests will be reviewed, analyzed and aggregated into budget recommendations that will reflect the strategic objectives and policies of the HART Board. Budgets will be established and expended to reflect as accurately as possible all costs related to activities of each program, department or cost center. The proposed balanced budget will be presented to the HART Board and adopted in accordance with Florida law.

(b) With adoption of the budget, the HART Board is approving a broad policy plan as well as the estimated funding needs at the program, department and organizational level and providing statutory authorization for the expenditure of HART public funds. Line items and cost centers are subsets of the overall budget established for control and tracking purposes, and are not mandates to fully expend funds appropriated, nor are they unchangeable limits.

(c) Budget control will be exercised at the cost center level. Budget line items may show negative balances, but total budgets of cost centers may not be exceeded. Budget performance will be evaluated based on budget and actual amounts monthly, quarterly and at fiscal year-end.
920.30 BUDGET PROCESS AND CALENDAR (cont’d)

(2) Amendments after Adoption

As provided in Florida Statute 189.418, once the budget is adopted it may be amended within the current fiscal year in the following manner:

(a) Requests for appropriation of funds not previously budgeted will be processed as budget amendments as required by Florida statutes, Chapter 129.06(2) (d) and (e) and Chapter 189.418. All budget amendments that increase the annual appropriations require the approval of the HART Board and authorized by Resolution following a duly advertised public hearing.

(b) Individual appropriations for expenses may be decreased and/or increased, provided that the total of the appropriations are not changed.

(c) Appropriations from the undesignated fund balance may be made to increase the appropriation for any particular expense, or to create an appropriation for any lawful purpose with Board approval, but expenses may not be charged directly to the Reserve for Contingencies without Board approval.

(d) Revenue of a nature or source not anticipated in the budget and received for a specific purpose such as grants, donations, gifts, or reimbursement for damages may, by resolution of the Board, be appropriated and expended as designated by the Board or held in fund balance.

(3) Internal Budget Adjustments/Transfers

(a) Budget adjustments/transfers exist for very specific reasons. They should not be used to balance a department’s budget each month. Operating within one’s available budgetary resources is a managerial responsibility, and one which should be taken very seriously. The approved budget is a financial plan (based on an operations and strategic plan) and can be adjusted as circumstances change or by the Board of Directors directive; however, it should be adhered to as closely as possible and deviations need to be approved at the Chief level.

(b) When needs are less than originally anticipated or prices come in lower than budgeted, excess funds should accrue as savings to HART. They should not be considered as available dollars for additional expenditures. These accrued savings become cash forward (dropping to fund balance) in the next year’s budget as HART has a Key Performance Indicator (KPI) directing that a certain percentage of the prior year fund balance be added to the next year’s fund balance through cost savings to the organization.
(c) Capital equipment items not approved in the budget can be purchased in one of three ways. First, if the amount is less than $1,000, and if the requesting party has the funds available, then Finance can approve the purchase. Second, if the individual items or systems exceed $1,000 but do not exceed $5,000, and if the requesting party has funds available, then the Chief Financial Officer or designee can approve the purchase. Third, individual items or systems over $5,000 require HART Board approval with justification of fund availability whether from within one’s own budget or requiring a transfer out of the appropriate reserve. See Section 930.20 (6) for further information relating to reserves for contingencies.
930.10 REVENUE GUIDELINES

(1) Revenue projections will be based on an analysis of historical trends, reasonable assumptions of future conditions, state economic and revenue predictions, and will be made on a reasonable, conservative basis. Revenue estimates will be made for the entire 5-year strategic financial plan to ensure HART’s fiscal sustainability.

(2) Pursuant to state law, ad valorem revenue projections for the operating budget will be budgeted at 95 percent of the certified taxable value of the property tax roll.

(3) HART will not use short- or long-term debt to finance expenses required for operations.

(4) The operating budget will be balanced using current year revenues to finance current year expenses. Fund balance shall not normally be budgeted as a resource to support routine annual operating expenses unless authorized by the Board through the budgetary process. Fund balance may be budgeted on a non-recurring basis as a resource to support capital, debt (if any), or extraordinary major maintenance needs or as reserves to be carried forward, pursuant again, to the Board approval.

(5) As early as practical in each annual budgeting cycle, the HART Board shall give direction to Administration as to the circumstances under which a change to the ad valorem tax millage would be considered. Normally, such direction would be given in January of each year in conjunction with the setting of a tentative budget calendar.

(6) Fees should be collected on all HART-provided services for which specific users may be readily identified and use may be reasonably quantified. The amount of the fee should be based on actual costs incurred in providing the services (or facility), and shall be reviewed at least biannually. The degree to which fees shall recover full costs shall be a policy determination of the Board, but in no instance should it exceed the total cost of service provision.
930.20 EXPENSE GUIDELINES

(1) As early as practical in the budget process, the CEO and Executive Team shall discuss staffing for both current and planned years.

(2) Contractual obligations and compensation plans for employees will be provided. Along with all other required budget material submitted by division and department directors in March and April of each year, the Risk and Human Resource Manager shall prepare an estimate of amounts to be budgeted for workers’ compensation, self-insurance for liability and healthcare and other related claims.

(3) Normal maintenance requirements necessary to sustain the basic asset value will be included in the budget of the proper operating fund.

(4) Future capital improvement requirements and replacements will be included in operating plans requiring such reserves as may be necessary. The annual amount set aside to provide reserves for future capital requirements should be consistent with individual departmental needs.

(5) Capital funding will be provided for major improvements and automation of services based on multiple-year planning, the adopted TDP and appropriate cost benefit analysis. Each year, as early as practical, the Executive Team shall discuss specific capital replacement requirements and policies for the upcoming year.

(6) An amount equal to two percent of the budgeted expenditures for the next fiscal year shall be budgeted as a reserve for contingency. Statutorily, ten percent maximum is allowed.
930.30 DEBT MANAGEMENT/DEBT POLICY

(1) Policy Statement

Currently, HART has no short-, mid-, or long-term debt obligations. However, HART Charter does provide for the issuance of bonds and, with the approval of each Charter member, may issue bonds to carry out its authorized powers or purposes. If debt is chosen as a form of funding for future HART projects, the following categories of debt will be considered:

(a) Long-Term Debt:

Long-term borrowing (10+ years) will not be used to finance current operations, planned operations, or routine maintenance.

(b) Medium-Term Debt:

Lease purchase methods, bonds, or other debt instruments may be used as a medium-term (5 to 10 years) method of borrowing for the financing of vehicles, other specialized types of equipment, or other capital improvements. The equipment or improvement must have an expected life at least equal to the years leased or financed. HART will determine and utilize the least costly financing methods available. Such debt arrangements will be repaid within the expected life of the equipment or improvement acquired.

(c) Short-Term Debt:

Short-term borrowing (less than 5 years) may be utilized for temporary funding of anticipated tax revenues, anticipated grant payments, or grant related expenses waiting reimbursement, anticipated bond proceeds, or other expected revenues. Short-term debt, such as tax exempt commercial paper, bond anticipation notes, tax anticipation notes, or grant anticipation notes (includes borrowing from HART’s own Fund Balance. HART will determine and utilize the least costly method for short-term borrowing, when needed.
940.10 CAPITAL IMPROVEMENT PROGRAM (CIP) & POLICY

(1) Policy Statement

The CIP budget contains 5 years of funding of planned capital projects. The first year of the CIP budget reflects funding for the improvements identified therein and is contained in that year’s budget. The remaining four years of the CIP budget lists the capital projects identified for implementation and their estimated costs in those subsequent years. Each year, the list of projects is reviewed for need, cost and priority and aligned to the TDP.

New projects may be added and other projects deleted, based on organizational planning and need. Vehicles or equipment are included in the CIP when they have an expected life of five (5) years or more, and a cost of $1,000 or greater. Generally, capital improvements are defined as physical assets, constructed or purchased, that have a useful life of five years or longer and a cost of $1,000 or more.

(2) Carry-Over

During the previous fiscal year, there may be certain capital improvement projects that either were not completed or started during the year; however, HART intends to complete these projects and expend the funds in the next fiscal year. Therefore, the items are treated as a “carry-over” meaning that the project and unused funds are being carried forward from the previous fiscal year to the new fiscal year capital improvement budget.

(3) Funding of Capital Improvements Expenditures

CIP expenditures are funded from several funding sources – capital grants, general operating funds, impact fees, and other capital contributions as indicated in the revenue section of the CIP Budget.

Each year, the 5-year CIP shall be updated as part of the annual HART budget. Such review and revision of the CIP shall be consistent with the HART established strategic goals and objectives, as well as reflect the intent of the TDP. Specifically:

(a) Recommended capital improvements and projects shall be deemed consistent with the CIP, as to general location, scale and type of facility, although it need not be consistent in revenue sources or manner of operation;

(b) Amounts shown in the CIP as estimated project costs are estimates and not intended to serve as precise project budgets. A precise project budget will be established for a project upon completion of engineering and architectural plans and specifications (upon which the project cost will be estimated);
940.10 CAPITAL IMPROVEMENT PROGRAM (CIP) & POLICY (cont'd)

(c) Any project included in the program may be financed by any available revenue, as allowable by law; and

(d) Anticipated operating expenses associated with supporting, operating and/or maintaining the resulting capital asset must be included in the out-year strategic budgeting process and be included in initial project cost estimates.
950.10 BANKING

(1) Responsibility

(a) Responsibility for the administration of HART’s banking function is vested in the Office of the Chief Financial Officer (CFO). The CFO and the Finance Department will establish proper internal controls to ensure sound financial management practices are implemented and checks and balances exist among several employees. The CFO will identify a primary relationship manager who will serve as a central point of contact with banking entities.

(b) The HART Board Finance, Governance and Administration Committee is charged with reviewing solicitations for banking entities.

(c) Authorized signers on HART bank accounts will be as follows:
   - Chief Executive Officer
   - Chairman, Board of Directors
   - Vice-Chairman, Board of Directors
   - Secretary, Board of Directors

(d) The CFO is authorized to establish and maintain bank accounts for employee funds where the funds contained within the account are contributed by the employees and are solely for employee activities (e.g. recreation fund). These types of accounts will be controlled by the CFO or his designee but may allow specific employees to provide signatory authorization.

(2) Banking Objectives

The following objectives will be applied in the selection and management of HART’s bank accounts.

(a) Periodically initiate a process of competitive procurement in accordance with state and local laws and regulations for major banking services. The process should use a request for proposals (RFP) that should include services, fees, earnings credit rates, and availability schedules for deposited funds. In addition, it is important to utilize independent bank evaluation services to verify creditworthiness of the financial institution prior to award of a contract and throughout the contract period.

(b) Contracts for banking services will specify services, fees, and other components of compensation.
950.10 BANKING (cont’d)

(c) Evaluation for selection of a banking partner will look at the relative benefits and costs of paying for services through direct fees, compensating balances, or a combination of the two (blended). Factors to consider in this evaluation are the earnings credit rate, reserve requirements and insurance fees on deposits. Also, the banks’ ability to provide such items as: on-line electronic balance and reconciliation services; ZBA bank account handling; treasury management; cash vault services; stop payments; electronically transmitted analysis and statements; positive pay fraud prevention; ACH payments; merchant services (credit card handling), and procurement cards will be evaluated.
INVESTMENTS

(1) Scope

The HART Board of Directors through the Chief Executive Officer or his designee has the authority for investing HART public funds.

(2) Investment Objectives

The following investment objectives will be applied in the management of HART funds:

(a) Safety of Capital – Safety of publicly funded capital is regarded as the highest priority in the handling of investments for HART, with all other investment objectives secondary. Each investment decision shall seek to first ensure that capital losses are avoided, whether they are from defaults or erosion of market value.

(b) Liquidity – HART’s investment strategy will provide sufficient liquidity as not to inhibit cash flow requirements.

(c) Yield – When investing public funds, HART will strive to maximize the return on the portfolio but will avoid assuming unreasonable risk simply for the benefit of higher yield.

(3) Current Investment Strategy and Program

HART currently maintains all “idle” cash used for investment in the State Board of Administration (SBA), run by the State of Florida. The SBA manages Florida PRIME, a 2a-7-like pool, carried at an amortized cost. A 2a-7-like pool is not registered with the Securities and Exchange Commission (SEC) as an investment company, but has a policy that it operates in a manner consistent with the SEC’s Rule 2a-7 of the Investment Company Act of 1940, which regulates money market funds. Therefore, Florida PRIME operates essentially as a money market fund and HART’s position in Florida PRIME is considered to be equivalent to its fair value.

Regulatory oversight of the SBA is provided by three state of Florida elected officials designated as trustees: the Governor serves as Chairman of the SBA; the Chief Financial Officer serves as Treasurer of the SBA; and the Attorney General serves as Secretary of the SBA. External oversight of the State Board of Administration is provided by the Investment Advisory Council, which reviews investment performance, strategy and decision-making, provides insight, advice and counsel on these and other matters when appropriate. Audit oversight is also provided by the state of Florida Audit General.

HART Clerk: ___
950.20 INVESTMENTS (cont’d)

Due to HART’s reliance on reimbursable grants, access to liquidity and cash flow management requirements dictate this investment policy (e.g. the utilization of the SBA) at the current time. Multiple or varied higher yield long-term investment instruments, although a goal, is neither prudent nor achievable at this time. At such time, investment of surplus funds may be in the following instruments:

(a) Negotiable direct obligations of, or obligations of which the principal and interest are unconditionally guaranteed by the U.S. Government;

(b) Interest bearing time deposits or savings accounts in qualified public depositories as defined in Section 280.02, Florida Statutes;

(c) Prime commercial paper with the highest credit quality rating from a nationally recognized agency;

(d) Tax exempt obligations rated “A” or higher and issued by state and local governments;

(e) Money market mutual funds;

(f) Local government investment pools.

(4) Standards of Care – Investment in the State Board of Administration (SBA) adheres to the following standards of care.

(a) Prudence and Ethical Standards – The “prudent person” standard shall be used in the management of the overall investment policy. The prudent person standard is understood to mean: “Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.”

HART officers, or persons performing the investment function, acting as a “prudent person” in accordance with this written policy and procedure, exercising due diligence and investments authorized by law, shall be relieved of personal responsibility for an individual security’s credit risk or market price changes, provided deviations from expectations are reported in a timely fashion to the Chief Executive Officer and Board of Directors, and appropriate action is taken to control adverse developments.
(b) **Ethics and Conflicts of Interest** – The Finance employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. The above mentioned shall disclose any material interests in financial institutions with which HART conducts business. They shall further disclose any personal financial or investment positions that could be related to the performance of HART’s investments.

(c) **Continuing Education** – Those responsible for making investment decisions will annually complete 8 hours of continuing education in subjects or courses of study related to investment practices and products.

(d) **Periodic Reports** – Financial staff will periodically prepare reports for submission to the Board, which will include market value of securities held and investment performance results.
HILLSBOROUGH TRANSIT AUTHORITY
POLICY MANUAL

900: FINANCIAL AND BUDGETING POLICIES AND PROCESSES
960: BUDGET RESERVES

960.10 FUND BALANCE & RESERVES POLICY

(1) Overview

(a) Fund Balance is defined as resources remaining from prior years which are available to be budgeted in the current or future year(s) and calculated at the end of each fiscal year.

(b) HART has developed a key performance indicator directing that a certain percentage of the prior year fund balance be added to the next year’s fund balance through cost savings to the organization to ensure a sound fund balance.

(c) Various bond rating agencies, particularly Fitch Ratings, recognizes that the best reserve policies provide both specificity and flexibility, accomplishing one or more of at least three main criteria: establishing a target level of reserves, or a reserve floor; specifying the appropriate circumstances for drawing down reserves; and directing the replenishment of reserves.

(d) HART’s Fund Balance & Reserves Policy acts to mitigate other forms of uncertainty such as changes in the tax and spending policies of federal and state government; imposition of mandates by federal and state government or the courts; financial impacts of labor agreements, particularly those stemming from collective bargaining; repairs and replacement of aging infrastructure; and unforeseen increases in energy and fuel costs.

(e) HART will calculate the reserve amount at the conclusion of each fiscal year and report such amounts to the Board following the issuance of the prior year’s Comprehensive Annual Financial Report; and when appropriate, strive to calculate the reserve amount to meet the high end of any set range.
Reserve policies are an important factor in maintaining HART in good fiscal health and to attain fiscal sustainability. HART employs the following primary types of reserves:

(a) Self-Insurance Reserves

1. Risk Reserve – HART shall maintain an overall reserve equal to the 75 percent discounted confidence level of the annual actuarial study to ensure financial viability. HART’s Finance Department will book the discounted expected reserve level from the actuarial report as a liability. In addition, should a claim be made against HART that is identified subsequent to the actuarial report and prior to the issuance of HART’s Comprehensive Annual Financial Report that is financially material to the fund and highly likely to succeed, additional reserves will be established to provide adequate funds in reserve.

2. Medical Benefit Reserve – HART will maintain a reserve in accordance with the annual actuarial certification requirement to ensure financial viability. HART will procure an actuarial study annually and will take a conservative approach when establishing the amount of reserves required. HART’s Finance Department will book the net claim liability per the actuarial study. In addition, HART will maintain the required reserve of 20 percent of projected claims.

(b) Capital Matching Reserve – HART shall endeavor to maintain a reserve to be used for aging, outdated or inoperable operational capital infrastructure replacement, including Information Technology hardware/software. In addition, this reserve serves as a means to fund required capital program grant match requirements.

(c) Fund Balance Reserve – HART will maintain, at a minimum, a reserve of ninety days of operating expenditures to be used to ensure the maintenance of services to the public during non-routine and unforeseen disaster situations such as hurricanes and other weather-related events as well as other natural or man-made disasters that cause disruptions in public services as declared appropriate by the HART Board of Directors. Also, this reserve of ninety days of operating expenditures is also to be used to: (1) mitigate any delays, reductions or lower recalculations in the Federal Transit Administration’s Section 5307 Formula Funding that would affect HART’s ability to maintain positive cash flow for operations; (2) used for unanticipated expenditures of a nonrecurring nature; and (3) to meet unexpected immediate increases in service delivery costs.
960.10 FUND BALANCE & RESERVES POLICY (cont’d)

(d) **Undesignated Fund** Balance – Remaining fund balance subsequent to the above designations shall be considered “cash in the bank” and can be used with the discretion of the Board and/or Chief Executive Officer for authorized use.

(e) **CAFR Reporting** – Both reserve designations and undesignated balances will be reported as unrestricted net position on the CAFR. Amounts that can be spent only for specific purposes stipulated by external parties or imposed by law through enabling legislation would be reported as restricted net assets.
970.10 GIFT CARD POLICY

(1) Introduction

HART management and outside organizations will occasionally use gift cards or gift certificates to compensate employees. As cash-equivalent instruments, these items are governed by tax rules (Internal Revenue Code 132) and internal control requirements. These rules and requirements must be followed and communicated to those involved before purchase or distribution of any gifts. When gifts are distributed, they must be distributed in accordance with the guidelines set forth in this policy.

This policy applies to all HART personnel and is limited to gift cards funded by HART or where gifts will be provided to HART staff from an external source (e.g., vendor). The portions of the policy related to tax reporting are also applicable to distributions of any gifts and awards of non-cash tangible items with a fair market value greater than $25 if funded by HART.

(2) Definitions

(a) Gift Card means a stored-value or similar instrument issued in lieu of cash or check. For purposes of this policy, “gift card” includes gift certificates and non-cash tangible gifts.

(b) Non-Cash Tangible Gift means a product or service provided to an employee of a value in excess of $25.

(c) Responsible Employee means the staff member in the department disbursing the gift cards that is responsible for the documentation, internal control and other requirements of this policy.

(3) Allowable Uses and Limits

(a) Gift cards may only be distributed as prizes, recognition awards or tokens of appreciation to employees.

(b) Gift cards cannot be used as a bonus, honoraria, or other means of compensation to employees. Such payments must be processed through the payroll system.

(4) Approvals

Prior to purchase, gift card usage must be approved by the responsible department director and the Chief Financial Officer (CFO) by completing the Gift Card Request Form. Once approval notification has been received from the CFO, the cards can be purchased using the method described below. Included on the Gift Card Request Form is a Statement of Responsibility that the Responsible Employee must sign to signify that he or she understands the additional responsibilities associated with gift card stewardship and distribution.

HART Clerk: _
970.10 GIFT CARD POLICY (cont'd)

(5) Approved Purchase Method

Departments can only purchase gift cards by going through HART's Procurement Department. This process centralizes gift card administration, facilitates tracking for purposes of compliance with IRS tax regulations and eases the purchase process for departments.

Once the CFO has approved the Gift Card Request Form, the department can attach this form to the electronic requisition completed through WorkPlace. The Procurement Department will process the purchase request and ensure the vendor delivers the cards directly to the Finance Division. The Finance Division's inclusion in the delivery process will provide a "check and balance" internal control.

Gift cards should be purchased no more than one month prior to disbursement. For a situation where gift cards will be disbursed over a longer period of time, the gift cards should be purchased in increments with each increment tracked on a separate Gift Card Log.

(6) Required Documentation

The Responsible Employee is required to maintain the following documentation:

(a) Gift Card Request Form

This form is the official approval method, as noted above. The Form will be completed by the department, approved by the CFO and given to the Procurement Department as authorization for purchase along with a requisition form.

(b) Gift Card Log

For IRS tax reporting purposes, the issuing department is required to complete the Gift Card Log, which lists the parties receiving the gift cards and information required for IRS tax reporting purposes. The Responsible Employee will give the Gift Log to the Payroll Department by the earliest of the following dates: a) ten (10) business days after all gift cards have been distributed; or b) sixty (60) days after gift cards were purchased. In addition to the above, taxable gifts must be processed through Payroll during the calendar year it was provided to the employee.

(7) Internal Controls

The Responsible Employee has primary responsibility for safekeeping, maintenance and proper usage of the gift cards and for advising staff or management who handle the cards that they must follow this policy. Gift cards must be safeguarded at all times and accounted for as if they were cash. The following controls are required at a minimum:
970.10 GIFT CARD POLICY (cont’d)

(a) Custody

The Responsible Employee holds custody over the cards and should always know where they are. Custody may be transferred temporarily from the Responsible Employee to other departmental personnel for disbursement purposes, but the Responsible Employee still holds primary responsibility for the safekeeping of the cards. The Finance Division will record the serial numbers of the gift cards held in inventory and distributed to departments for purposes of tracking custody of each card.

(b) Physical Access

Gift cards must be secured at all times (e.g., in a locked box in a locked cabinet or drawer) with limited access. The Finance Division is responsible for safeguarding any gift card related tax documentation and must keep these records secured with limited access at all times. The Finance Division will keep its inventory in the safe.

(c) Tracking

Gift card disbursements must be documented on the Gift Card Log, designed to uniquely identify each payment in order to document the use of the card for audit and tax purposes. Because of IRS requirements, a recipient cannot receive the gift card if he or she refuses to provide the requested information. If the Responsible Employee disburses the card without obtaining this information, he or she may be subject to disciplinary action. Due to the nature of the data collected on the Gift Card Log, please treat the Log as confidential information. As noted on the Gift Card Log, information to be included for each card shall include at a minimum:

- Purpose of the payment
- Recipient name
- Employee Number
- Gift Value
- Partial serial number of the gift card
- Date of Disbursement
- Signature of the recipient, confirming receipt

(d) Inventory

Departments holding more than one gift card must perform a physical inventory at least on a weekly basis, with the results reconciled to the current Gift Card Log. The inventory should be performed by someone other than the Responsible Employee but in the presence of the Responsible Employee. Any discrepancies must be reported immediately to the CFO.

The Finance Division will inventory all centrally held gift cards at least weekly.
970.10 GIFT CARD POLICY (cont’d)

(8) Tax Reporting

In addition to annual W-2 reporting for all payments to employees in a given year, IRS regulations require reporting of any non-employee who receives a total value of $600 or more from HART in a calendar year. Because of these requirements, HART requires that a complete Gift Card Log be maintained for all recipients of gift cards or reportable non-cash tangible gifts.

The IRS considers gift cards to be tax reportable as compensation when issued or awarded to the recipient, regardless of value. Gifts to employees paid by HART funds (source of funding makes no difference) must be taxed as ordinary income to the employee. Gifts, rewards, and gestures of appreciation cannot be provided to employees as disguised compensation. The value of the gift cards (or reportable non-cash tangible gifts) will be included on an employee’s annual W-2 in taxable income. The employee’s earnings will be reduced by FICA and Medicare taxes, as applicable, at the next pay period after the gift earnings are applied.

It is the Responsible Employee’s duty to make the employee aware of the tax implications of the gift.

(9) Lost Cards

The Responsible Employee will be held responsible for any gift cards in their possession that are lost or misplaced. Any shortage must be reported immediately to the CFO.

The CFO, in conjunction with the Safety & Security Department, may investigate the circumstances surrounding the loss. If the investigation findings demonstrate the Responsible Employee did not use adequate internal controls, as defined by this policy, he or she cannot be the Responsible Employee for any future gift card disbursements and may be subject to disciplinary action.

HART has no responsibility or liability for the gift card(s) once they have been presented to an employee.

Associated Forms:
- Gift Card Request Form
- Gift Card Log
970.20 PURCHASING CARD POLICY

(1) Policy

The Finance Department will establish a Purchasing Card (P-Card) program with the authority to ensure that the purchasing of goods and services with a P-Card is accomplished as defined within this document.

Selected staff will be authorized to use the P-Card for one or several of the categories listed below:

(a) Travel-related expenses in compliance with HART’s Travel Policy & Procedures;
(b) Micro-purchases at the departmental level in compliance with HART Procurement Policy and Procedures; and/or
(c) Purchases by the Procurement Department in compliance with HART Procurement Policy and Procedures.

The Department Chief/Head and the Procurement Manager will review purchases to insure HART’s policies and procedures are followed.

(2) Introduction

The P-Card program is designed to improve efficiency in processing and payment of purchases. This program will allow the Cardholder to purchase approved commodities directly from merchants. Each P-Card is issued to a named individual and HART is clearly shown on the card as the governmental buyer of goods or services.

Participating in the P-Card program is a privilege. The success of HART’s P-Card program relies on the cooperation and professionalism of all personnel associated with this initiative. It is expected that the training program and procedures will assist in making this program a success. All existing cardholders will receive training at the implementation of this document, while new Cardholders will complete a training class before being issued a P-Card.

The procedures provided herein are minimum standards for departments. Departments may establish additional controls if necessary, but cannot alter the authorized procedures herein.
Primary responsibility for the Purchasing Card Program resides with the Chief Financial Officer. The Chief Financial Officer will assign a Program Administrator to oversee the program, develop Standard Operating Procedures and provide training to staff. The Senior Manager of Procurement and Contracts Administration will provide assistance and direction where necessary to comply with documented Procurement Policies and Procedures.

A complete Standard Operating Procedure for Purchasing Cards can be obtained from the Finance Department or through the HART Connect website.
1000: ENVIRONMENTAL POLICY

1000.01 PURPOSE

(1) The purpose of this Chapter 1000 is to establish an environmental policy for HART.

1000.02 POLICY

(1) Hillsborough Transit Authority (HART) believes that we have a responsibility to care for and protect the environment in which we operate. HART is fully committed to protecting and improving our environmental performance across all of our business activities by establishing, integrating and implementing the environmental policy framework that will guide HART in promoting the use of sustainable transportation and reduce negative environmental impacts.

(2) HART will empower its employees to integrate the actions necessary in their day-to-day work in order to meet our environmental responsibilities and continue to improve our environmental performance by:

(a) Complying with, by meeting or exceeding all applicable and relevant federal, state, local and other environmental regulations and legal requirements;

(b) Developing an Environmental Management Systems (EMS) that will provide a comprehensive approach, based on the structural framework and organized process of the ISO 14001 International Standard, that will be used to identify, document and address specific regulatory needs, and maintain compliance on an ongoing basis;

(c) Minimizing significant environmental impacts identified within HART’s EMS by setting environmental objectives and continually evaluating progress towards these goals;

(d) Demonstrating through organizational leadership the commitment necessary to foster a culture of environmental responsibility and sustainability;

(e) Striving to continuously improve environmental practices by providing mitigation and corrective action, and monitoring to ensure that environmental commitments are implemented;

(f) Enabling each employee and those working on behalf of HART to fulfill this policy by providing ongoing training, and the necessary resources required to adhere to this policy;

(g) Reaching out to the public to encourage citizen awareness and involvement in promoting environmental stewardship and sustainability.

(h) Prevention of pollution that is produced as a direct result of HART operations.

HART Clerk: [Signature]
(3) Environmental stewardship is and must be an integral part of HART's business practices. It is incumbent on each of HART’s employees to help fulfill the commitments set forth in this statement. This environmental policy will be documented, reviewed on an annual basis, and communicated to all employees. This policy will also be available to the public via HART’s website.

This policy is approved by the HART Board of Directors and is effective on January 5, 2015.

Name: Yelleta Pettit
Title: Clerk of the Board
Signature: 
Date: Jan 6, 2015

HART Clerk: 
1000: ENVIRONMENTAL POLICY
1000: POLICY STATEMENT

1000.02 POLICY (cont'd)

(3) Environmental stewardship is and must be an integral part of HART’s business practices. It is incumbent on each of HART’s employees to help fulfill the commitments set forth in this statement. This environmental policy will be documented, reviewed on an annual basis, and communicated to all employees. This policy will also be available to the public via HART’s website.

This policy is approved by the HART Board of Directors and is effective on November 4, 2013.

Name: Yelena Petit
Title: Clerk of the Board
Signature: [signature] Date: 11-04-13

HART Clerk: [signature]
1100: TRANSIT ASSET MANAGEMENT POLICY
1100: POLICY STATEMENT

1100.01 PURPOSE

(1) The purpose of this Chapter 1100 is to establish a Transit Asset Management (TAM) Policy for Hillsborough Transit Authority (HART).

1100.02 POLICY

(1) HART is committed to taking a holistic approach in preserving and improving the State of Good Repair of its transportation investments by adopting and implementing the TAM Plan framework. By applying the TAM framework, HART will embark on a long-term endeavor of continual improvement that will build upon, strengthen, preserve, and improve its existing infrastructure focusing on the procurement, maintenance, rehabilitation, and replacement processes of its assets.

(2) HART’s commitment to asset management responsibilities include:

(a) complying with and satisfy all applicable FTA requirements;

(b) performing asset management through a whole life approach, incorporating risk and performance criteria;

(c) integrating and consistently following asset management through well-defined policies, procedures and processes;

(d) implementing investment strategies through the development of programs and fiscally responsible institutional practices;

(e) maintaining emphasis on preventative preservation and lower long-term cost;

(f) evaluating asset management performance metrics on a regular basis to monitor HART’s asset management maturity;

(g) developing and improving asset management competence of our employees;

(h) collecting, preserving, operating, and reinvesting in HART assets more cost-effectively through improved performance; and

(i) committing to the continuous improvement of the HART Asset Management system.
1100.02  POLICY (cont’d)

(3)  HART’s commitment to implement and advance asset management ensures its assets are maintained efficiently and effectively through procedures and policies that link the HART’s strategic objectives with its investment decisions. The policy represents a comprehensive, proactive, transparent and ongoing approach geared towards managing existing and new infrastructure to maximize benefits, reduce risk and provide safe and reliable levels of service to the patrons we serve in the Hillsborough community. The TAM requirements will be documented, reviewed on an annual basis, and communicated to all HART employees.

This policy is approved by the HART Board of Directors and is effective on November 5, 2018.

Name: Yelena Petit
Title: Clerk of the Board
Signature: ___________________________ Date: 11-5-2018
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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.
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.

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 what 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.
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
(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 are 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;
(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 therefore, 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 allowed 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) **Insurence.**

(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.
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.

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 of 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 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 of 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.
“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.

“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.

“DBE” means a Disadvantaged Business Enterprise (see definition, below).

"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.

“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.

“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.

“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.

“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.

“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.
"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.

"Insurance" is a contract whereby one undertakes to indemnify another or pay or allow a specified amount or a determinable benefit upon determinable contingencies.

"Insurer" includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance or of annuity.

"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.

"Invitation for Bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

"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.

"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.


"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.

"May" denotes the permissive.

"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.
(57) "Protest" means a claim that there has been a violation of law or these regulations or some other impropriety in connection with Authority procurement.

(58) “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.

(59) "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.

(60) “Real Property” means property that includes land and buildings, and anything affixed to the land.

(61) “Request for Proposals” means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(62) “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.

(63) “Responsive Bidder” means a person who has submitted a bid which conforms in all material respects to the Invitation for Bids.

(64) “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.

(65) “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.

(66) “Shall” denotes the imperative.

(67) "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.

(68) “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.