

ADMINISTRATIVE RULE 6

SUBJECT: DISPUTE RESOLUTION

EFFECTIVE DATE: March 22, 2012¹

SCOPE:

This Administrative Rule sets forth the processes by which the Authority resolves disputes involving its procurement process, its contracts for the purchase and/or sale of goods, supplies, services or other materials, and other claims, generally, which would include for example claims against the Authority related to torts and workers compensation, which may or may not involve litigation.

AUTHORITY:

Authority for the establishment of this Administrative Rule is as follows:

Part II, Chapter 343, Florida Statutes

RULE 6: Dispute Resolution

6.1 **Purpose of Rule.** The Governing Board has established this Administrative Rule for the following purposes:

- A. To set forth procedures for the resolution of disputes related to the Authority's Procurement process;
- B. To set forth procedures for the resolution of disputes related to Contracts to which the Authority is a party; and
- C. To set forth rules that apply to all other disputes involving the Authority, including tort claims and workers' compensation claims.

6.2 **Application.** The provisions of **Section 6.3** shall apply to all disputes. All disputes that relate to the Authority's Procurement process shall be resolved in accordance with the applicable process set forth in **Section 6.4**. All disputes that relate to Contracts with the Authority shall be resolved in accordance with the process set forth in **Section 6.5**. The provisions of **Section 6.6** shall apply to the settlement of all claims (other than those addressed by **Section 6.5**), including those involving workers' compensation and tort claims.

¹ This new Administrative Rule was adopted by the Governing Board at its meeting held on July 28, 2010. It removes from Administrative Rule 4 any dispute resolution materials and expands such materials to include other dispute resolution areas. This Administrative Rule 6 was further amended by the Governing Board at its meeting held on March 22, 2012.

6.3 **General Provisions Applicable to All Disputes.** The following provisions shall apply to all disputes, regardless of whether such disputes relate to the Authority's Procurement process, Contracts with the Authority, or any other claims:

6.3.1 **No Waiver of Sovereign Immunity.** Pursuant to Florida Statutes § 768.28, the State of Florida, for itself and for its agencies and subdivisions, has agreed to waive sovereign immunity for torts, but only to the extent specified therein. No provision of any Contract nor any provision of these Administrative Rules shall be interpreted to constitute a waiver by the Authority of the benefits afforded to it by sovereign immunity beyond the specific amounts waived by Florida Statutes § 768.28.

6.3.2 **Federal Transit Administration.**

A. **FTA Notification.** The Authority shall notify the FTA of all disputes arising from the Procurement process and all Contract Disputes, which, in either case, involve the expenditure of Federal funds, and shall keep the FTA apprised of the status of same.

B. **FTA Review.** Under certain circumstances the FTA will review a Procurement dispute or Contract Dispute that involves a Procurement made with Federal funds, however, such review is limited to determining whether the Authority has failed to follow its protest procedures.

6.3.3 **Arbitration or Judicial Action.** With respect to any dispute involving the Procurement process or Contracts to which the Authority is a party, each Bidder, Proposer, and Contractor, as applicable, agrees that, with respect to any such dispute, the Authority shall have the sole discretion to determine whether the parties should first attempt to resolve said dispute by mediation. Each Bidder, Proposer, and Contract, as applicable, further agrees that should the Authority not elect to first attempt to resolve the dispute by mediation, or should mediation be unsuccessful, the Authority shall have the sole discretion to determine whether said dispute should be resolved by either a court of law or by binding arbitration. In that regard the following provisions shall apply:

A. **Mediation.** If the Authority decides that the parties to a dispute should first attempt to resolve the dispute by mediation, then the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to arbitration, judicial action or some other dispute resolution procedure. Any such mediation shall be held in Orange County, Florida.

B. **Arbitration.** If the Authority decides that a dispute should be resolved by arbitration, then arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be

entered in any court having jurisdiction thereof. Any such arbitration shall be held in Orange County, Florida.

C. **Judicial Action.** If the Authority decides that a dispute should be resolved in a court of law, then the following provisions shall be applicable:

(i) **Jurisdiction and Venue.** Any action, suit or proceeding arising in connection with the dispute shall be brought exclusively in the Ninth Judicial Circuit of the State of Florida or the United States District Court for the Middle District of Florida, Orlando Division.

(ii) **JURY TRIAL WAIVER. THE AUTHORITY, ON ONE HAND, AND THE BIDDER, PROPOSER OR CONTRACTOR, AS APPLICABLE, ON THE OTHER, EACH AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL THEN OR THEREAFTER EXIST WITH REGARD TO THE CONTROVERSY OR CLAIM, OR ANY COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THE FOREGOING WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH PARTY, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE.**

With respect to this subsection, it is subject to the specific provisions of **Section 6.3.6** below, and nothing contained herein shall grant to any party any rights with respect to any protest which may be filed under **Section 6.4** below.

6.3.4 **Director of Procurement.** All notices and other communications which are required to be filed with the Director of Procurement pursuant to this Rule 6 shall be in writing and shall be sent to the Director of Procurement at the following address:

LYNX Central Station
Procurement Department
455 North Garland Avenue
Orlando, Florida 32801
Attention: Director of Procurement

6.3.5 **Severability.** If any portion of this Rule 6 is determined to be invalid or unenforceable, the balance of this Rule 6 shall remain in effect.

6.3.6 **Status of Protest with Respect to Procurement Protest.** Nothing contained in any procurement dispute resolution procedure, including the provisions under **Section 6.4**, shall grant any Protesting Party any right as to that procedure

(including any right to file a Procurement Protest or, if filed, any right with respect to the processing of that Procurement Protest by the Authority) including any right to enter into a Contract with the Authority. Rather, the right to protest any action of the Authority under **Section 6.4**, or under any component thereof, including before the SEC or the Director of Procurement, shall be a matter of privilege, as any protest shall solely be for the benefit of the Authority. The resolution of any protest shall be solely within the discretion of the Authority, including within the discretion of those individuals or entities designated herein for hearing and resolving any protest, and any decision by the Authority shall be final and binding and not subject to any further appeal or protest. Any party submitting any proposal with the Authority shall specifically by virtue of filing any such proposal expressly agree to the provisions of this Section.

- 6.3.7 **Contact with Authority/No Solicitation or Contact During Procurement Dispute Process.** All prohibitions with respect to contact with Members and Officers of the Authority pursuant to **Section 4.7** of Administrative Rule 4 shall remain in effect until the resolution of the protest or the exhaustion afforded the Protesting Party under **Section 6.4** hereof.

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SECTION 6.4:

THE PROCEDURES SET FORTH IN SECTION 6.4 (INCLUDING SECTION 6.4.1 & 6.4.2) SHALL APPLY TO ALL DISPUTES ARISING FROM THE PROCUREMENT PROCESS.

- 6.4 **Disputes Involving Procurement Process – Applicable Procedure.** All disputes that arise from the Procurement process shall be resolved in accordance with one of the two procedures set forth in either **Section 6.4.1** or **Section 6.4.2**. The procedure set forth in **Section 6.4.1** shall apply when only the Director of Procurement is responsible for the recommendation of award of a Contract or when the dispute relates to an issue arising before the Procurement is submitted to a Source Evaluation Committee. The procedure set forth in **Section 6.4.2** shall apply when only a Source Evaluation Committee is responsible for the recommendation of award of a Contract and the dispute relates to an issue arising after the Procurement is submitted to a Source Evaluation Committee.

Failure to timely and fully comply with each of the requirements in the applicable procedure shall, in the absolute discretion of the Director of Procurement, result in a waiver of the protest (collectively, a **“Waiver”**). Any Bidder or Proposer protesting the Procurement process or any award of a Contract thereunder is referred to in this Rule as a **“Protesting Party.”**

SECTION 6.4.1:

THE PROCEDURE SET FORTH IN THIS SECTION 6.4.1 SHALL APPLY WHEN: (1) ONLY THE DIRECTOR OF PROCUREMENT IS RESPONSIBLE FOR THE RECOMMENDATION OF AWARD OF THE CONTRACT, OR (2) WHEN THE DISPUTE RELATES TO AN ISSUE ARISING BEFORE THE PROCUREMENT IS SUBMITTED TO A SOURCE EVALUATION COMMITTEE.

- 6.4.1 **General.** The following procedure shall apply to all disputes arising from the Procurement process or the award of a Contract thereunder when: (1) only the Director of Procurement is responsible for the recommendation of award of the Contract, or (2) if the dispute relates to an issue arising before the Procurement is submitted to a Source Evaluation Committee (such as when the dispute relates to a submission requirement or a filing deadline).

- A. **Step 1 – Director of Procurement.** The initial arbiter of any dispute which is subject to this procedure shall be the Director of Procurement. The process by which disputes shall be resolved by the Director of Procurement is as follows:

1. **Procurement Protest; Deadline for Filing.** In order to initiate the dispute resolution process, the Protesting Party must file a formal written protest (“**Procurement Protest**”) with the Director of Procurement. The Procurement Protest must be filed before 5:00 p.m. (local time) on the fifth (5th) business day following (i) the posting date of the Director of Procurement’s recommendation of award, or (ii) if there is no recommendation yet made, then following the particular action that the Protesting Party wishes to appeal (e.g., a determination by the Director of Procurement that the bid by the Protesting Party is untimely or does not meet the necessary qualifications and therefore has been rejected). Failure to file the Procurement Protest by this deadline shall result in a Waiver by the Protesting Party. Failure of the Protesting Party to request a copy of the recommendation of award shall not extend the deadline for filing a Procurement Protest. A Procurement Protest is considered filed with the Director of Procurement upon his/her receipt.

2. **Requirement to Notify Person Awarded Contract.** The Protesting Party must also timely furnish a copy of the Procurement Protest to the Person who was recommended to be awarded the Contract (if a recommendation of award had been made) at or before the time the Protesting Party files the Procurement Protest under paragraph 1 above. Failure to timely comply with the aforementioned requirement will result in the Procurement Protest being deemed untimely, and, as a consequence, result in a Waiver by the Protesting Party.

3. **Elements of Procurement Protest.** The Procurement Protest must include the following elements:
 - a. an identification of the Protesting Party and the Invitation for Bid or Request for Proposal involved; and

 - b. a clear, succinct and complete statement of the Protesting Party’s grounds for the Procurement Protest and the request for relief. Any supporting materials must be contained in said statement. No materials may be submitted in furtherance of the Procurement Protest after the timely submittal without the Authority’s approval, and can be disregarded by the Authority in its discretion.

 - c. the cash bond referenced in the following paragraph 4.

The Procurement Protest will be the sole basis for the Authority to review said Procurement Protest. Notwithstanding the foregoing, the Director of Procurement may, in his/her absolute discretion, seek additional materials regarding the Procurement Protest either

from the Protesting Party or from other sources, as set forth in paragraph 6 below.

4. **Requirement of Deposit to Proceed to Protest.** Concurrently with, and as a condition for, the filing of a Procurement Protest, the Protesting Party shall furnish to Director of Procurement along with filing the Procurement Protest a cash bond (in the nature of a check payable to the Authority) in an amount equal to two percent (2%) of the amount bid by the Protesting Party, but in no event less than \$1,000.00. However, the Protesting Party may, with the filing of the Procurement Protest, request a reduction in said cash bond which the Director of Procurement may, in her/her absolute discretion for good cause shown, reduce, but in no event to less than \$1,000.00 (thus, in any event, the Protesting Party if it seeks a reduction in the cash bond under the foregoing clause, must post with the Procurement Protest a cash bond in the amount of \$1,000.00 at the time of filing the Procurement Protest). Said cash bond shall be held by the Authority for the purpose of paying any expenses (including its attorneys' fees) incurred by the Authority in processing the Procurement Protest. Further, if it is determined by the Authority that the Procurement Protest is without merit, the Authority may assess against the Protesting Party an additional amount to cover any third-party expenses (e.g., attorneys' fees) incurred by the Authority. In the event the Procurement Protest is successful and ultimately affirmed by the final deciding body or person, then the Authority may consider (but is not obligated to make) a refund to the Protesting Party of all or a portion of said cash bond.

5. **Suspension of Procurement Process.** The Procurement process (including the awarding of the Contract) shall be suspended upon receipt of a Procurement Protest which satisfies the filing and content requirements set forth above. Such suspension shall continue until the earlier of:
 - a. the resolution of the Procurement Protest;
 - b. the exhaustion of all remedies afforded the Protesting Party under this procedure;
 - c. a determination by the Chief Executive Officer, in his or her absolute discretion (and not subject to any further appeal or review), that the award of the Contract without delay is in the best interest of the Authority; or
 - d. a determination by the Chief Executive Officer that the Procurement Protest is frivolous in nature.

6. **Decision by Director of Procurement.** The Director of Procurement shall render a written decision as to the matters set forth in the Procurement Protest.
 7. **Hearing.** The Director of Procurement may, in his or her sole discretion, elect to conduct a hearing at which the Protesting Party will be afforded the opportunity to present evidence to support those specific matters set forth in the Procurement Protest. If a hearing is held, such hearing will be conducted in accordance with procedures approved by the Director of Procurement and will be presided over by the Director of Procurement. Failure by the Protesting Party to attend and participate in any hearing required by the Director of Procurement will result in a Waiver by the Protesting Party. Nothing contained will require any such hearing and the Director of Procurement may resolve the Procurement Protest based solely upon the Procurement Protest and such other information as the Director of Procurement may desire or obtain in his/her discretion.
 8. **Additional Information for Director of Procurement.** Nothing contained in this Section will restrict or prohibit the Director of Procurement from seeking additional information regarding the Procurement Protest, whether from the Protesting Party or from any other source, and from considering any such information in rendering his/her decision.
 9. **Appeal Right.** The decision of the Director of Procurement shall be final and conclusive unless the Protesting Party timely appeals the decision in accordance with **Section 6.4.1.B** below.
- B. **Step 2 – General Manager.** The appeal of any decision of the Director of Procurement shall be rendered by the General Manager. The process by which appeals shall be rendered by the General Manager is as follows:
1. **Procurement Appeal; Deadline for Filing.** If the Protesting Party desires to appeal the decision of the Director of Procurement, the Protesting Party must file a formal written appeal (“**Procurement Appeal**”) with the Director of Procurement in accordance with the requirements below. The Procurement Appeal must be filed before 5:00 p.m. (local time) of the fifth (5th) business day following the date the Director of Procurement renders its decision in accordance with Section **6.4.1.A(6)**. Failure to file a Procurement Appeal by this deadline will result in a Waiver by the Protesting Party. A Procurement Appeal is considered filed with the Director of Procurement upon receipt.
 2. **Elements of Procurement Appeal.** The Procurement Appeal must include the following elements:

- a. an identification of the Protesting Party and the Invitation for Bid or Request for Proposal involved; and
 - b. a clear explanation of either or both of the following: (i) why the decision reached by the Director of Procurement was incorrect and/or (ii) in what way the Director of Procurement failed to adhere to the terms of this dispute resolution procedure. No further material or support may be submitted by the Protesting Party.
 - c. The cash bond referenced in paragraph A(4) shall remain for any expenses incurred by the Authority in the appeal process.
3. **Additional Information for General Manager.** Nothing contained in this Section will restrict or prohibit the General Manager from seeking additional information regarding the Procurement Protest, whether from the Protesting Party or from any other source, and from considering any such information in rendering his/her decision.
 4. **Hearing.** The General Manager may, in his or her sole discretion, elect to conduct a hearing at which the Protesting Party will be afforded the opportunity to present evidence to support those specific matters set forth in the Procurement Appeal. If a hearing is held, such hearing will be conducted in accordance with procedures approved by the General Manager and will be presided over by the General Manager. Failure by the Protesting Party to attend and participate in any hearing required by the General Manager will result in a Waiver by the Protesting Party.
 5. **Decision by General Manager.** The General Manager shall render a written decision as to the matters set forth in the Procurement Appeal.
 6. **Final Decision.** The decision rendered by the General Manager shall be final and binding upon the Protesting Party, and shall not be subject to any further appeal.

SECTION 6.4.2:

THE PROCEDURE SET FORTH IN THIS SECTION 6.4.2 SHALL ONLY APPLY IF: (1) A SOURCE EVALUATION COMMITTEE IS RESPONSIBLE FOR THE RECOMMENDATION OF AWARD OF THE CONTRACT AND (2) THE DISPUTE RELATES TO AN ISSUE ARISING AFTER THE PROCUREMENT IS SUBMITTED TO THE SOURCE EVALUATION COMMITTEE.

6.4.2 **General.** The following procedure shall apply to all disputes arising from the Procurement process when: (1) a Source Evaluation Committee is responsible for the recommendation of award of the Contract and (2) the dispute relates to an issue arising after the Procurement is submitted to the Source Evaluation Committee. If a dispute relates to a matter that arises before the Procurement has been submitted to the Source Evaluation Committee (such as when the dispute relates to a submission requirement or a filing deadline), then, in that case, the dispute shall instead be resolved in accordance with the procedure set forth in **Section 6.4.1.**

A. **Step 1 – Director of Procurement.** The initial arbiter of any dispute which is subject to this procedure shall be the Director of Procurement. The process by which disputes shall be resolved by the Director of Procurement is as follows:

1. **Procurement Protest; Deadline for Filing.** In order to initiate the dispute resolution process, the Protesting Party must file a Procurement Protest with the Director of Procurement. The Procurement Protest must be filed before 5:00 p.m. (local time) of the fifth (5th) business day following the posting date of the Source Evaluation Committee's recommendation of award. Failure to file a Procurement Protest by this deadline will result in a Waiver by the Protesting Party. Failure of the Protesting Party to request a copy of the recommendation of award shall not extend the deadline for filing a Procurement Protest. A Procurement Protest is considered filed with the Director of Procurement upon his/her receipt.
2. **Requirement to Notify Person Awarded Contract.** The Protesting Party must also mail a copy of the Procurement Protest to the Person who was recommended to be awarded the Contract at or before the time the Protesting Party files the Procurement Protest. Failure to timely comply with the aforementioned requirement will result in the Procurement Protest being deemed untimely, and, as a consequence, result in a Waiver by the Protesting Party.

3. **Elements of Procurement Protest.** The Procurement Protest must include the following elements:
- a. an identification of the Protesting Party and the Invitation for Bid or Request for Proposal involved; and
 - b. a clear statement of the Protesting Party's grounds for the protest and the request for relief.
 - c. the cash bond referenced in the following paragraph 4.

The Procurement Protest must be based solely upon the materials submitted to the Authority for the award and will be the sole basis for the Authority to review the Procurement Protest. Notwithstanding the foregoing, the Director of Procurement may, in his/her absolute discretion, seek additional materials regarding the Procurement Protest either from the Protesting Party or from other sources, as set forth in paragraph 6 below.

4. **Requirement of Deposit to Proceed to Protest.** Concurrently with, and as a condition for, the filing of a Procurement Protest, the Protesting Party shall furnish to Director of Procurement along with filing the Procurement Protest a cash bond (in the nature of a check payable to the Authority) in an amount equal to two percent (2%) of the amount bid by the Protesting Party, but in no event less than \$1,000.00, **provided, however,** the Protesting Party may, with the filing of the Procurement Protest, request a reduction in said cash bond which the Director of Procurement may, in her/her discretion for good cause shown, reduce, but in no event to less than \$1,000.00 (thus, in any event, the Protesting Party if it seeks a reduction in the cash bond under the foregoing clause, must post with the Procurement Protest a cash bond in the amount of \$1,000.00 at the time of filing the Procurement Protest). Said cash bond shall be held by the Authority for the purpose of paying any expenses (including its attorneys' fees) incurred by the Authority in processing the Procurement Protest. Further, if it is determined by the Authority that the Procurement Protest is without merit, the Authority may assess against the Protesting Party an additional amount to cover any third-party expenses (e.g., attorneys' fees) incurred by the Authority. In the event the Procurement Protest is successful and ultimately affirmed by the final deciding body or person, then the Authority may consider (but is not obligated to make) a refund to the Protesting Party of all or a portion of said cash bond.
5. **Suspension of Procurement Process.** The Procurement process (including the awarding of the Contract) shall be suspended upon receipt of a Procurement Protest which satisfies the filing and

content requirements set forth above. Such suspension shall continue until the earlier of:

- a. the resolution of the protest;
 - b. the exhaustion of all remedies afforded the Protesting Party under this Procurement Protest Procedure;
 - c. a determination by the Chief Executive Officer in his or her absolute discretion (which will not be subject to any review) that the award of the Contract without delay is reasonably in the best interest of the Authority; or
 - d. a determination by the Chief Executive Officer that the Procurement Protest is frivolous in nature.
6. **Additional Information for Director of Procurement.** Nothing contained in this Section will restrict or prohibit the Director of Procurement from seeking additional information regarding the Procurement Protest, whether from the Protesting Party or from any other source, and from considering any such information in rendering his/her decision.
7. **Hearing.** The Director of Procurement may, in his/her sole discretion, elect to conduct a hearing at which the Protesting Party will be afforded the opportunity to present evidence to support those specific matters set forth in the Procurement Protest. The Director of Procurement may, but it not obligated to, require that the Source Evaluation Committee be in attendance at the hearing and make determinations with respect to any aspect of the Procurement Protest as requested by the Director of Procurement, if any; **provided, however,** that the Director of Procurement reserves all rights to make a final determination with respect to the Procurement Protest, including if so requested by the Director of Procurement a “rescoring” or “reranking” by the Source Evaluation Committee. If a hearing is held, such hearing will be conducted in accordance with procedures approved by the Director of Procurement and will be presided over by the Director of Procurement. Failure by the Protesting Party to attend and participate in any hearing required by the Director of Procurement will result in a Waiver by the Protesting Party.
8. **Decision by Director of Procurement.** The Director of Procurement shall render a written decision as to the matters set forth in the Procurement Protest.
9. **Appeal Right.** The decision of the Director of Procurement shall be final and conclusive unless the Protesting Party timely appeals the decision in accordance with **Section 6.4.2.B** below.

B. **Step 2 – General Manager.** The appeal of any decision of the Director of Procurement shall be rendered by the General Manager. The process by which appeals shall be rendered by the General Manager is as follows:

1. **Procurement Appeal; Deadline for Filing.** If the Protesting Party desires to appeal the decision of the Director of Procurement, the Protesting Party must file a Procurement Appeal with the Director of Procurement. The Procurement Appeal must be filed before 5:00 p.m. (local time) of the fifth (5th) business day following the date the Director of Procurement renders its decision in accordance with Section **6.4.2.A(6)**. Failure to file a Procurement Appeal by this deadline will result in a Waiver by the Protesting Party. A Procurement Appeal is considered filed with the Director of Procurement upon receipt.
2. **Elements of Procurement Appeal.** The Procurement Appeal must include the following elements:
 - a. an identification of the Protesting Party and the Invitation for Bid or Request for Proposal involved; and
 - b. a clear explanation of either or both of the following:
 - (i) why the decision reached by the Director of Procurement was incorrect and/or
 - (ii) in what way the Director of Procurement failed to adhere to the terms of this dispute resolution procedure. No further material or support may be submitted by the Protesting Party.
 - c. The cash bond referenced in paragraph A(4) shall remain for any expenses incurred by the Authority in the appeal process.
3. **Additional Information for General Manager.** Nothing contained in this Section will restrict or prohibit the General Manager from seeking additional information regarding the Procurement Protest, whether from the Protesting Party or from any other source, and from considering any such information in rendering his/her decision.
4. **Hearing.** The General Manager may, in his or her sole discretion, elect to conduct a hearing at which the Protesting Party will be afforded the opportunity to present evidence to support those specific matters set forth in the Procurement Appeal. The General Manager may require that the Source Evaluation Committee be in attendance at the hearing and make determinations with respect to any aspect of the Procurement Appeal; provided, however, that the General Manager reserves all rights to make a final determination with respect to the Procurement Appeal. If a hearing is held, such

hearing will be conducted in accordance with procedures approved by the General Manager and will be presided over by the General Manager. Failure by the Protesting Party to attend and participate in any hearing required by the General Manager will result in a Waiver by the Protesting Party.

5. **Decision by General Manager.** The General Manager shall render a written decision as to the matters set forth in the Procurement Appeal.
6. **Final Decision.** The decision rendered by the General Manager shall be final and binding upon the Protesting Party.
7. **Special Rule for when General Manager is a member of the Source Evaluation Committee.** If the General Manager is a member of the Source Evaluation Committee for the Procurement which is the subject of the dispute, the appeal of any decision of the Director of Procurement shall be rendered by the Chief Executive Officer rather than the General Manager. Accordingly, when the General Manager is a member of the Source Evaluation Committee, the term “Chief Executive Officer” shall be substituted for the term “General Manager” wherever it appears in this **Section 6.4.2.B.**

6.4.3 **Status of Awards.** In regard to both **Section 6.4.1** and **6.4.2:**

- A. Nothing contained in this procedure shall afford to any party, including any Protesting Party, any right to receive an award of a Contract from the Authority or any right to protest as to the procedures so followed by the Authority. The process is solely for the benefit of the Authority and, as such, the Authority at all times, shall have the absolute discretion whether or not to dismiss a Procurement Protest and to award a Contract to any party, and to waive any irregularities or issues as to any submittal by the successful party.
- B. The ultimate award by the Authority of a Contract shall not be subject to any further appeal beyond that set forth in this **Section 6.4** [and shall constitute a determination by the Authority of a determination that any Procurement Protest is without merit]. Once the Authority has approved the award of a Contract, that decision will be final and not subject to any further appeal.
- C. Notwithstanding the foregoing, should any party wish to institute a suit thereafter against the Authority, that party will be obligated to post a bond in favor of the Authority for the amount of the Contract award and will reimburse the Authority for any legal fees and costs it has incurred as a result of said appeal (which will be covered by said bond). In the event any Protesting Party should bring an action against the Authority, the sole

remedy available to the Protesting Party, if it is successful, is to recover from the Authority the amount of the cash bond posted by it in the dispute resolution process. The Authority shall have no other liability or obligation whatsoever to said Protesting Party.

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SECTION 6.5:

THE PROCEDURE SET FORTH IN SECTION 6.5 (INCLUDING SECTION 6.5.1 – 6.5.4) SHALL APPLY TO ALL DISPUTES ARISING FROM CONTRACTS TO WHICH THE AUTHORITY IS A PARTY.

6.5 **Disputes Involving Contracts to Which the Authority is a Party.** Any and all controversies or claims arising out of or relating to any Contract to which the Authority is a party, or to any breaches thereof (collectively, “**Contract Disputes**”) shall be resolved in accordance with the procedure set forth below, except as otherwise expressly provided to the contrary in a particular Contract. Failure to comply with each of the requirements in the applicable procedure shall result in a Waiver by the Contractor involved in the Contract Dispute.

6.5.1 **Step 1 – Director of Procurement.** The initial arbiter of any Contract Dispute shall be the Director of Procurement. The process by which disputes shall be resolved by the Director of Procurement is as follows:

- A. **Delivery of Written Notice; Waiver.** The Contractor must deliver written notice (in accordance with the provisions below) of a Contract Dispute to the Director of Procurement promptly upon first obtaining actual knowledge of the dispute. Failure to promptly file written notice shall result in a Waiver by the Contractor.
- B. **Content of Written Notice.** The written notice referred to above must contain the following elements:
 - 1. an identification of the Contract involved and an identification of all of the parties thereto; and
 - 2. a clear description of the Contract Dispute (including a reference to the contractual provisions on which the Contractor is relying) and the remedy sought.
- C. **Hearing.** The Director of Procurement may, in his or her sole discretion, elect to conduct a hearing at which the Contractor will be invited to present evidence to support his, her or its position. If a hearing is held, such hearing will be conducted in accordance with procedures approved by the Chief Executive Officer. Failure by the Contractor to attend and participate in any hearing required by the Director of Procurement will result in a Waiver by the Protesting Party.
- D. **Decision by Director of Procurement.** Within fifteen (15) business days of receiving written notice of a Contract Dispute, which complies with the requirements above, the Director of Procurement shall render a written decision as to the matters in dispute. In the event a hearing is held, the

aforementioned deadline shall be tolled until ten (10) days following the conclusion of the hearing.

- E. **Appeal Right**. The decision rendered by the Director of Procurement shall final and binding on the Contractor, unless it is appealed in accordance with **Section 6.5.2** below.

6.5.2 **Step 2 – General Manager**. The appeal of any decision of the Source Evaluation Committee shall be rendered by the General Manager. The process by which appeals shall be rendered by the General Manager is as follows:

- A. **Contract Appeal; Deadline for Filing**. If the Contractor desires to appeal the decision of the Director of Procurement, the Contractor must file a formal written appeal (“**Contract Appeal**”) with the Director of Procurement. The Contract Appeal must be filed before 5:00 p.m. (local time) of the fifteenth (15th) business day following the date the Director of Procurement renders its decision in accordance with Section **6.5.1.D**. Failure to file a Contract Appeal by this deadline will result in a Waiver by the Contractor.
- B. **Elements of Contract Appeal**. The Contract Appeal must include the following elements:
 - a. an identification of the Contract involved and an identification of all of the parties thereto; and
 - b. a clear explanation why the decision reached by the Director of Procurement was incorrect.
- C. **Hearing**. The General Manager may, in his or her sole discretion, elect to conduct a hearing at which the Contractor may present evidence to support his, her or its position. If a hearing is held, such hearing will be conducted in accordance with procedures approved by the Chief Executive Officer. Failure by the Contractor to attend and participate in any hearing required by the General Manager will result in a Waiver by the Contractor.
- D. **Decision by General Manager**. Within thirty (30) days of receiving a Contract Appeal, satisfying the filing and content requirements set forth above, the General Manager shall render a written decision as to the matters set forth in the Contract Appeal. In the event a hearing is held, the aforementioned deadline shall be tolled until ten (10) days following the conclusion of the hearing.
- E. **Final Decision**. The decision rendered by the General Manager shall be final and binding upon the Contractor.

SECTION 6.5.3:

THE PROVISIONS SET FORTH IN SECTION 6.5.3 SHALL APPLY TO ALL SETTLEMENTS OF CONTRACT DISPUTES.

6.5.3 **Settlement of Disputes.** The settlement of any Contract Dispute must be approved by the Governing Board, except as provided in either **A**, **B** or **C** below:

A. **Settlements of Contract Disputes involving Minor Contracts (i.e., Contracts of \$150,000 or less).** The Chief Executive Officer or General Manager, if designated by the Chief Executive Officer, is authorized to settle any dispute, claim or controversy without first obtaining the approval of the Governing Board if each of the following two conditions is met:

1. The Contract which is the subject of the Contract Dispute is a Minor Contract; and
2. The sum of (a) the settlement amount (when such amount is totaled with all other claims or judgments paid by the Authority arising out of the same incident or occurrence) and (b) the value of the Contract does not exceed \$150,000.

B. **Settlements of Contract Disputes if Timing is an Issue.** The Authority's Chief Executive Officer is authorized to settle any dispute, claim or controversy without first obtaining the approval of the Governing Board, irrespective of whether the dispute, claim or controversy involves a Minor Contract or a Major Contract, and irrespective of the amount of the settlement, if each of the following two conditions is met:

1. The Chief Executive Officer determines that the Authority will likely suffer a financial or opportunistic loss by waiting until the next regularly scheduled meeting of the Governing Board to settle the dispute, claim or controversy; and
2. The Chairman of the Governing Board has first consented to the specific settlement.

6.5.4 **Notification of Governing Board.** The Governing Board must be notified of any settlement made without its prior approval pursuant to the authorization contained in either **Section 6.5.3 A** or **B** at its first Board meeting following the settlement; then in the case of settlements under **Section B** above, notice will be given to the Governing Board as soon as practicable but in any event within ten (10) business days.

SECTION 6.6:

THE PROVISIONS SET FORTH IN SECTION 6.6 (INCLUDING SECTION 6.6.1 – 6.6.3) SHALL APPLY TO ALL DISPUTES (OTHER THAN THOSE ADDRESSED BY SECTION 6.5), INCLUDING THOSE INVOLVING WORKERS' COMPENSATION AND TORT CLAIMS.

- 6.6 **Settlement of Disputes.** The settlement of any dispute, claim or controversy involving the Authority (other than those addressed by **Section 6.5**), including those that arise from or that relate to torts and workers' compensation, must be approved by the Governing Board, except as provided in either **Section 6.6.1** or **6.6.2** below:
- 6.6.1 **Settlements of \$50,000 or Less.** The Chief Executive Officer, or General Manager if designated by the Chief Executive Officer, is authorized to settle any dispute, claim or controversy without first obtaining the approval of the Governing Board if (a) the settlement amount does not exceed \$50,000, when such amount is totaled with all other claims or judgments paid by the Authority arising out of the same incident or occurrence, and (b) the settlement amount is within the budget line item for settlements.
- 6.6.2 **Settlements over \$50,000.** The Authority's Chief Executive Officer is authorized to settle any dispute, claim or controversy without first obtaining the approval of the Governing Board if each of the following two conditions is met:
- A. The Chief Executive Officer determines that the Authority will likely suffer a financial or opportunistic loss by waiting until the next regularly scheduled meeting of the Governing Board to settle the dispute, claim or controversy; and
- B. The Chairman of the Governing Board has first consented to the specific settlement.
- 6.6.3 **Notification of Governing Board.** The Governing Board must be notified of any settlement made without its prior approval pursuant to the authorization contained in either **Section 6.6.1** or **6.6.2** above at its first Board meeting following the settlement. In regard to settlements over \$50,000, notice will also be given to the Governing Board as soon as practicable but in any event within ten (10) business days.

I hereby certify that the foregoing Administrative Rule 6 was adopted by the Governing Board of the Authority at its duly called meeting on July 28, 2010, and was further amended by the Governing Board of the Authority at its duly called meeting on March 22, 2012.


Deborah Morrow, Assistant Secretary