

**ADMINISTRATIVE RULE 4  
PROCUREMENT AND CONTRACT ADMINISTRATION**

**DATE:** May 22, 2014<sup>1</sup>

**SCOPE:**

This Administrative Rule applies to the process by which the Authority contracts for labor, services, goods, and materials for its business, both in the normal and ordinary course of business and in emergency situations. It establishes the process and procedure to be followed by the Authority, the Governing Board, and Authority Staff in regard to said matters.

**AUTHORITY:**

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

Part II, Chapter 343, Florida Statutes

**RULE 4: Procurement and Contract Administration**

4.1. **Definitions.** Capitalized terms not otherwise defined herein shall have the meanings provided for such terms as set forth in Administrative Rule 1.

4.2. **General Provisions.**

4.2.1 **Establishment, Scope, and Purpose.** The Governing Board has established this Administrative Rule governing Procurement and Contract administration. The purpose of this Administrative Rule is to place the Authority's contracting function under a centralized system, enabling the Authority to (i) establish policies governing all Procurements and Contracts, (ii) provide for fair and equitable opportunity for all persons doing business with the Authority, and (iii) provide safeguards for maintaining a structured procurement system of quality and integrity.

4.2.2 **Applicability.** This Administrative Rule shall apply to all Procurements and Contracts by the Authority and the administration of all procurement actions including Contracts by the Authority.

4.2.3 **Federal and State Applicability.** The Authority receives Federal and State funds. Therefore, Procurements must be conducted in accordance with all Federal and state regulations that apply to the particular Procurement. The Authority (either through its Governing Board or its Chief Executive Officer) may modify Authority procedures including provisions of this Administrative Rule in order to comply with procedures for state or Federally funded grant programs. Any modification by the Chief Executive Officer shall be noticed to the Governing Board as an information item at the next scheduled meeting if said modification is

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<sup>1</sup> This Administrative Rule was originally adopted by the Governing Board at its meeting held on March 22, 2012. This Administrative Rule was amended by the Governing Board at its meetings held on August 9, 2012 and May 22, 2014.

material. The Governing Board may waive any or all regulations, including, without limitation, this Administrative Rule, in order to comply with a Federal or state law.

4.2.4 **Discretion/Waiver Right of Authority.** This Administrative Rule 4 is solely for the benefit of the Authority, and establishes the guidelines by the Governing Board by which the Authority Staff is to undertake the procurement functions of the Authority. By adopting this Administrative Rule 4, the Governing Board does not intend to grant to third persons any legal rights in the overall process, as the process is to enable the Authority, in its discretion, to obtain for the benefit of the Authority the best contracts as determined by the Authority in its discretion. Thus, the Governing Board (without limitation) and the Authority Staff as set forth in this Rule, will have the discretion as to who is to be awarded a Contract and on what terms and conditions. With this background and not by way of limitation:

- A. As this Administrative Rule has been adopted by the Governing Board, any determination to be made under this Administrative Rule (including who is to be awarded a Contract with the Authority) may be made by the Authority (meaning the Governing Board) in its absolute discretion. In that regard, the Authority will, as set forth above, have ultimate and final authority as to all matters and may waive or modify all issues in regard to any procurement, whether procedural, material or otherwise. As such, the award of any contract by the Governing Board will be final and will be not subject to any appeal.
- B. The CEO or the Director of Procurement may also make determinations regarding the procurement process in its or his/her discretion but only as to procedural and non-material items (any material or substantive changes will need to be made by the Governing Board). In addition, the Authority (through the CEO or the Director of Procurement with respect to any procedural or non-material items) shall have the right in its discretion to modify or waive any of these Rules or the terms of any RFP or similar request with respect to any particular Procurement or in regard to any proposal/ability to award and approve Contracts. This Section is intended to vest in the Authority, the CEO, or the Director of Procurement as broad discretion as possible for the benefit of the Authority in this process.
- C. In regard to determinations made by the Director of Procurement, his/her determination to waive any procedural matters is included in said discretion and, further, as to a non-material item, that is also within the discretion of that person. With respect to any issue as to whether an item is procedural or non-material, the decision if required by the Chief Executive Officer shall be final and determinative, absent a clear abuse of discretion. However, in any event, the Governing Board as set forth under paragraph A above can make any such decision.

- D. The preliminary recommendation or ranking as to any award of a Contract, whether by the SEC, the CEO, or the Director of Procurement shall not vest in that person any legal right unless and until a final Contract has been fully executed between that person and the Authority. As such, until such time as such a Contract has been executed, the Authority (including the awarding person such as the Director of Procurement) may, in its absolute discretion, refuse to enter into a Contract, may reject the recommendation of the ranking party, may terminate the RFP or other process, and may elect to award the Contract to other persons submitting a proposal. By way of illustration and not limitation, any ranking which may be furnished to the Governing Board in any procurement is only a recommendation to the Governing Board, and the Governing Board, in its absolute discretion may elect to award the Contract to any person.
- E. In regard to the procurement process, the CEO or the Director of Procurement, as set forth above, may waive any defect in any proposal at any time.
- F. In the event any person submitting a proposal to the Authority should file a Protest under Administrative Rule 6, nothing contained in this Administrative Rule 4 (or in Administrative Rule 6) shall further grant any legal right to a protesting party to assert that any Contract should be awarded to that particular party due to any provisions of Administrative Rule 4 or any right as to the process by which the Authority will resolve any such Protest. Any such Protest is for the benefit of the Authority which is to be determined by the Authority in its discretion in order for the Authority to determine who in the best interest of the Authority should enter into a Contract.

4.2.5 **Procurement Department.** The Procurement Department shall administer and facilitate the Procurement process.

4.2.6 **Approval of Awards/Delegation of Authority.** Except as expressly provided herein, all approvals and awards of Procurements, whether by Request for Quotation, Invitation for Bid, Request for Proposals, work order or any other method authorized hereunder, and whether by Contract or any other method, shall require the approval of the Governing Board, or through delegated authority as set forth in this Administrative Rule.

#### 4.3. **Requirement For/Exclusions From Competitive Bidding.**

4.3.1 **General Requirement for Competitive Bidding.** Except as otherwise provided below or elsewhere in these Administrative Rules, all Procurements will generally be sought through competitive bidding.

4.3.2 **Exclusions From Competitive Bidding.** Certain transactions cannot be handled through competitive bidding. The following transactions shall not be subject to a

requirement for competitive bidding but will still be required to be approved by the Governing Board or through delegated authority as set forth in these Administrative Rules:

- A. Agreements between the Authority and governmental entities (i.e. interlocal agreements).
- B. Agreements between the Authority and non-profit organizations (i.e. interlocal agreements).
- C. Procurement of Direct Pay items in accordance with and subject to governing or applicable limits or Federal laws for the following: dues and memberships in trade or professional organizations, subscriptions for periodicals deemed necessary but ancillary for delivering of transportation services, advertisements, postage, expert witnesses, abstracts of titles for real property, closing costs and processing fees for acquisitions, title insurance for real property, deeds, judgments, debt service, mortgagee(s), collective bargaining agreements, salaries, taxes, auto allowance, borrowing of money, pensions, bonds, certificates of insurance, employee service performance awards, water, sewer, and electrical utility services, copyrighted books deemed necessary but ancillary for delivering of transportation services, videos deemed necessary but ancillary for delivering of transportation services, fees, costs of job-related seminars, training, catering service, and fees, licenses, permits, approved travel expenses for the Authority, and non-recurring charges deemed necessary but ancillary for delivering of transportation services.
- D. The lease or purchase of real property, such as land, easements, rights-of-way, existing buildings, structures, or improvements.
- E. Goods and/or services given to, or accepted by the Authority via gift, grant or bequest.
- F. Goods purchased with petty cash, not to exceed \$150.00.
- G. Purchases of goods and/or services through joint utilization of existing governmental competitive contracts available to the Authority pursuant to State or Federal law, commonly referred to as “**Piggyback Contracts.**” Piggyback Contracts may also include the piggybacking under contracts entered into with any governmental jurisdiction such as Schedules (i.e. GSA Schedule 70, State of Florida) Purchasing Cooperatives, etc. consistent with any applicable funding requirements.
- H. Blanket Purchase Orders under \$3,000.00 per fiscal year.
- I. Items purchased for resale to the general public.
- J. Micropurchases under \$3,000.00 per fiscal year.

- K. Contracts for obtaining of labor for the Authority through the collective bargaining process.
- L. Emergency purchases.
- M. Sole Source Procurements.
- N. Bus Advertising Contracts.
- O. Revenue Contracts.
- P. Short-Term Bus Service Agreements.
- Q. Financially Exigent Agreements.
- R. Other methods of Procurement as determined by the Governing Board from time to time.

4.3.3 **Bidding Process for Procurements.** Subject to the further provisions of Section 4.3.2, and unless otherwise provided in these Administrative Rules, the following dollar amounts will determine the process to be followed by the Authority in regard to a particular Procurement:

<b><u>Contract Amount</u></b>	<b><u>Process to be Followed</u></b>
Above \$50,000.00	A formal competitive bidding process is required such as but not limited to an IFB or an RFP.
\$50,000.00 or less, but above \$3,000.00	Generally a Request for Quotation which would require two or more quotes which could be done by phone, email, etc.
\$3,000.00 or less	Does not require formal competitive process but does require that purchases generally be distributed among vendors and that the price be fair and reasonable in the opinion of the Authority.

The provisions of this Section shall not be applicable to any Procurement under Section 4.3.2 or as otherwise determined by the Governing Board.

4.3.4 **Sole Source Procurements.**

- A. A determination of sole source may be made by the Chief Executive Officer after conducting a good faith review of available sources, which demonstrates there is only one viable source for the required supply, service, or item. A record of determination of the sole source shall be maintained by the Director of Procurement. Any such sole source

Procurement shall conform to the requirements of FTA and applicable State or Federal law.

- B. For a commodity or service to be deemed as a sole source Procurement, the Procurement Department must have the appropriate written documentation approved by the Director of the requesting Department proving at least one of the following:
  - 1. The item is available only from a sole source;
  - 2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - 3. FTA authorizes noncompetitive negotiations;
  - 4. After solicitation of a number of sources, competition is deemed inadequate; or
  - 5. The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The Authority must first certify in writing to FTA: (i) that such manufacturer or supplier is the only source for such item; and (ii) that the price of such item is no higher than the price paid for such item by like customers.
- C. The procedure for acquiring a sole source procurement shall not waive the approval/execution requirements otherwise set forth in these Administrative Rules. Thus, for example, a Major Contract, if found to be a sole source procurement, must still be approved by the Governing Board.
- D. Any sole source procurement shall be reported to the Governing Board at its next meeting as an information item.

4.4. **Contract Authority – Who May Approve and Execute Contracts.**

- 4.4.1 The following chart typically sets forth the approval required for a particular Contract, and is subject to the more specific provisions of the applicable Rule:

[Chart begins on following page.]

	<u>Amount of Contract</u>	<u>Required/Permitted Approval</u>	<u>Rule Reference</u>	<u>Ability to Delegate Approval Authority</u>	<u>Who Can Execute</u>
1	<p>Major Contract</p> <p><b>NOTE:</b> Generally speaking, every Contract is a Major Contract requiring approval by the Governing Board, unless otherwise provided in these Administrative Rules.</p>	Governing Board	4.4.2	No. The Governing Board does, however, have the authority when it approves the Contract to delegate authority.	<p>The Chairman as well as the CEO or, in the CEO's absence, the GM. The Governing Board in approving the Contract, can further delegate or restrict authority as to who can execute the Contract.</p> <p><b>NOTE:</b> Thus, once the Governing Board has approved the Contract, it can be executed by the Chairman or CEO or, in the CEO's absence, the GM, provided the actual Contract does not vary in any material adverse way from what was approved by the Governing Board. Otherwise, the Contract would need to go back to the Governing Board for re-approval.</p> <p><b>NOTE:</b> In addition, once the Governing Board has approved a Contract, the CEO is authorized to take whatever action may be appropriate or necessary to fulfill said approval by the Governing Board regarding said Contract, <b><u>provided, however,</u></b> if such action either</p>

	<u>Amount of Contract</u>	<u>Required/Permitted Approval</u>	<u>Rule Reference</u>	<u>Ability to Delegate Approval Authority</u>	<u>Who Can Execute</u>
					(i) varies materially from the approval, or (ii) is materially adverse to the Authority, then further approval by the Governing Board is required.
2	Options for Major Contracts  <b>NOTE:</b> Any approval of an option under this provision shall be noticed to the Governing Board as an information item at the next scheduled meeting of the Governing Board. <b>NOTE:</b> Any Option not falling within this category requires approval by the Governing Board.  <b>NOTE:</b> Thus, if the Governing Board does not specifically authorize staff to exercise options, options must come back to the Governing Board for approval.	CEO, provided:  a) such option was contained in the original approved Contract and clearly described in the printed agenda of the Governing Board for that meeting; and b) Governing Board in the original approval authorized the renewal of the option by the CEO without the need for further Governing Board approval	4.4.3	The Governing Board can delegate the authority to approve any Option. CEO cannot delegate his/her authority to approve the exercise of any Option.	CEO or in the absence of the CEO, any other Senior Officer, provided the CEO has approved the exercise of the Option.

	<u>Amount of Contract</u>	<u>Required/Permitted Approval</u>	<u>Rule Reference</u>	<u>Ability to Delegate Approval Authority</u>	<u>Who Can Execute</u>
3	<p>Minor Contract</p> <p><b>NOTE:</b> In considering the amount of the Contract, the value of all options is included.</p> <p>Any Minor Contract of \$25,000 or more in any one fiscal year shall be noticed to the Governing Board as an information item at the next scheduled meeting of the Governing Board.</p>	CEO	4.4.4 4.4.5	<p>Yes. CEO can delegate authority by written authorization to approve said Minor Contract to:</p> <p>a) GM, CAO or CFO if Contract has a value of \$150,000 or less.  b) any Senior Officer and the Director of Procurement if Contract has a value of \$50,000 or less.  c) Procurements/ Contracts Manager if Contract has a value of \$25,000 or less.  d) Procurement Department Contract Administrators or Buyers if Contract has a value of \$5,000 or less.  e) Individual Authority Employees for micro-purchasers if Contract has a value of \$3,000 or less.</p>	The same party to whom authority has been delegated can execute the Contract.
4.	<p>Bus Advertising Contracts</p> <p>a) Level 1 Contracts – Contract does not exceed \$180,000 in the aggregate and the term does not exceed 12 months.</p> <p>b) Level 2 Contracts – Contract exceeds \$180,000 but is less than \$300,000, or it has a term greater than 12 months.</p> <p>c) Level 3 Contracts – all other Bus Advertising Contracts.</p>	<p>a) GM, CEO or CFO.</p> <p>b) CEO provided that the Contract receives prior approval by the Authority’s general counsel.</p> <p>c) Must be approved by the Governing Board and reviewed by Authority’s general counsel</p>	4.4.6	<p>a) If the Contract is less than \$150,000, then the CEO can further delegate under 3 above</p> <p>b) No.</p> <p>c) No.</p>	<p>a) GM, CFO or CEO</p> <p>b) CEO</p> <p>c) As determined by Governing Board in its approval. See 1 above as this would be a Major</p>

	<u>Amount of Contract</u>	<u>Required/Permitted Approval</u>	<u>Rule Reference</u>	<u>Ability to Delegate Approval Authority</u>	<u>Who Can Execute</u>
	<p><b>NOTE:</b> A summary of new Bus Advertising Contracts shall be provided as information items to the Governing Board at its next meeting.</p> <p>If the Bus Advertising Contract involves a Bus Trade, then that Bus Trade must be approved by CEO.</p>				Contract.
5	<p>Emergency Purchases</p> <p><b>NOTE:</b> Any such Contracts shall be reported to the Governing Board as soon as practicable (and in any event within ten (10) days after said action has been taken). In addition, the CEO will brief the Governing Board of said action at its next scheduled meeting as a discussion item.</p>	<p>a) CEO, without Governing Board approval, if amount involved is \$150,000 or less.</p> <p>b) If the amount exceeds \$150,000, then the CEO in light of the emergency circumstances shall attempt to contact the Chairman of the Board or, in his/her absence, the Vice-Chairman for approval and oversight; if the Chairman and the Vice-Chairman cannot be contacted or the circumstances are such that the emergency does not allow time to contact the Chairman and the Vice-Chairman, then the CEO will have authority to approve and execute the Contract.</p> <p>c) Authority is also provided to the</p>	4.4.7	<p>a) For amounts of \$150,000 or less, the CEO may delegate with written authorization to any Senior Officer.</p> <p>b) CEO may not delegate amounts in excess of \$150,000; but amounts in excess of \$150,000 can be delegated to any Senior Officer if approved in writing by the Chairman of the Board, or in his/her absence, to the Vice Chairman.</p>	<p>a) CEO or whoever the CEO may delegate.</p> <p>b) In the absence of CEO, any other Senior Officer may execute if approved in writing by Chairman or Vice-Chairman.</p>

	<u>Amount of Contract</u>	<u>Required/Permitted Approval</u>	<u>Rule Reference</u>	<u>Ability to Delegate Approval Authority</u>	<u>Who Can Execute</u>
		Chairman of the Board or, in the absence of the Chairman and the CEO, then the Vice Chairman of the Board. However, in the absence of the CEO, the Chairman of the Board or in his/her absence, the Vice Chairman may delegate authority to execute to any Senior Officer to approve and execute the Contract.			
6	Fuel Purchases	<p>a) Governing Board Approval is required to approve authorized vendors to sell fuel to the Authority. This would be through a competitive bidding process. In said approval, the Governing Board can establish the conditions for the actual purchases of fuel by the CEO or other persons. The approval by the Governing Board of a vendor and a master contract does not of itself delegate authority to actually purchase fuel from that approved vendor. Any such authority must be set forth in either the Governing Board Resolution or in the Administrative Rules.</p> <p>b) In the event the Authority wishes to purchase fuel under an approved contract based on OPIS</p>	4.4.9	<p>a) CEO</p> <p>b) CEO may delegate in writing for purchases under the OPIS contract authority to do so to any other Senior</p>	<p>a) CEO</p> <p>b) CEO, or Senior Officer or Director of Procurement if written delegated authority is given.</p>

	<u>Amount of Contract</u>	<u>Required/Permitted Approval</u>	<u>Rule Reference</u>	<u>Ability to Delegate Approval Authority</u>	<u>Who Can Execute</u>
	<p><b>NOTE:</b> If at any time during the fiscal year, the Authority staff becomes aware that based upon the rate and price of fuel purchases made year to date, that there is a possibility that the Authority budget for fuel purchases for that fiscal year can be exceeded, then no further fuel purchases can be made until the Governing Board reviews the matter and makes any necessary adjustment to the budget or else further fuel purchases are made with the approval of the Chairman.</p>	<p>pricing or on the spot market, the CEO is authorized to do so but any purchase of fuel beyond a seven-day commitment would require approval of the Chairman.</p> <p>c) The CEO may purchase future contracts under a Contract approved by the Board, provided that the price per gallon does not exceed the price which the Authority's staff has utilized in establishing the Authority's budget for fuel for the period to which the purchase relates.</p>		<p>Officer or the Director of Procurement, within the seven-day limitation.</p> <p>c) No</p>	<p>c) CEO</p>
7.	<p>Short-Term Bus Service Agreement</p> <p><b>NOTE:</b> Any such agreement shall be reported to the Governing Board at its next scheduled meeting.</p>	<p>CEO if the dollar value of the agreement does not exceed \$500,000.</p> <p>Chairman of the Board if the dollar value of the agreement exceeds \$500,000.</p>	4.4.12	Yes.	CEO or its designee.

	<u>Amount of Contract</u>	<u>Required/Permitted Approval</u>	<u>Rule Reference</u>	<u>Ability to Delegate Approval Authority</u>	<u>Who Can Execute</u>
8.	Financially Exigent Agreement  <b>NOTE:</b> Any such agreement shall be reported to the Governing Board at its next scheduled meeting as an information item.	CEO if the agreement or renewal, as applicable, is less than \$150,000.  Chairman of the Governing Board if the agreement or renewal, as applicable, is \$150,000 or more.	4.4.13	Yes, by the Chairman of the Governing Board.	CEO or by any Senior Officer if so designated in writing by the Chairman.

The above Chart is specifically subject to the further provisions of each specific rule.

4.4.2 **Major Contracts (Including Contracts Above \$150,000.00)**. Except as otherwise expressly set forth in a resolution by the Governing Board or in these Administrative Rules (e.g. Emergency Purchases), all Major Contracts must be approved by the Governing Board. In that regard:

- A. The Governing Board shall have the authority by resolution to delegate authority to approve Major Contracts on such terms as the Governing Board may determine.
- B. Once approved by the Governing Board, any Major Contract can be executed by the Chairman or the CEO or, in the CEO's absence, the GM, unless otherwise provided in said approval. The Governing Board in approving the Major Contract may also authorize other Authority employees to execute said Contract. If the Contract contains any material adverse change from what the Governing Board approved, the further approval of the Governing Board is needed. Also, with the prior written approval of the CEO, any Senior Officer has authority to take such actions as may be appropriate or necessary to carry out the action by the Governing Board, **provided, however**, if either (i) said action varies materially from the Governing Board approval, or (ii) is materially adverse to the Authority (e.g., a substantial financial increase from that budgeted), then the further approval of the Governing Board would be required.
- C. Generally, every Contract is deemed to be a “**Major Contract**” which requires Governing Board approval, unless otherwise provided in these Administrative Rules or as otherwise provided from time to time in a resolution approved by the Governing Board.
- D. In order to determine whether a Contract exceeds \$150,000.00 and is therefore a “**Major Contract**”, the value of all Options is to be included

as if exercised, with such determination being made at the time the Contract is being considered for execution by the Authority.

- E. Approval of the Governing Board is also needed to exercise any Options, unless otherwise provided in Section 4.4.3 below.

4.4.3 **Ability to Approve and Exercise Options For Major Contracts.** Subject to the further provisions of this Section, approval to exercise an Option for a Major Contract, must be further approved by the Governing Board.

- A. Notwithstanding the above, the CEO can approve the exercise of an Option under a Major Contract provided the following two conditions are met:

1. The Option was contained in the original approved Major Contract clearly described in the printed agenda of the Governing Board for that meeting; and
2. The Governing Board authorized the renewal of the Option by the CEO without the need for further Governing Board approval.

- B. Once approved by the CEO, the CEO is authorized to execute the Option. The CEO may also authorize any other Senior Officer to execute the Option, but the CEO must first authorize the exercise of the Option.

- C. Any approval of an Option under this Section shall be noticed to the Governing Board as an information item on the next scheduled meeting of the Governing Board.

- D. With respect to options involving Minor Contracts, those may be approved and executed with the same authority and execution parameters as is the case for a Minor Contract.

4.4.4 **Minor Contracts (Generally Contracts of \$150,000.00 or Less).** Except as may be otherwise expressly set forth in a resolution adopted by the Governing Board, the CEO shall have the authority to approve and execute all Minor Contracts. In that regard:

- A. Any Minor Contract of \$25,000.00 or more in any one fiscal year of the Authority shall be noticed to the Governing Board as an information item at the next scheduled meeting of the Governing Board.

- B. In order to determine whether a contract is \$150,000.00 or less, the value of all Options is to be included as if fully exercised, with such determination being made at the time the Contract is being considered for execution by the Authority.

- C. The CEO shall further have the right to approve and exercise any Options for a Minor Contract.

4.4.5 **Delegation by CEO to Further Approve and/or Execute Minor Contracts.**

- A. The Chief Executive Officer may in writing delegate his or her authority under Subsection 4.4.4, to approve and/or execute Minor Contracts (including the approval and exercise of Options for Minor Contracts), all on such terms and conditions as the CEO deems appropriate, in the following values or amounts and to the following individuals:

<u>Amount of Contract</u>	<u>Who Can Approve/Execute</u>
\$150,000 or less	GM, CFO and/or CAO
50,000 or less	Any Senior Officer and the Director of Procurement
25,000 or less	Procurement/Contracts Manager
5,000 or less	Contract Administrator/Buyers
3,000 or less	Individual Authority Employees for Micropurchasers

There shall be maintained in the office of the Chief Executive Officer a listing and schedule of any such delegations, including the amount and persons to whom any such authorities have been delegated and the terms of such delegation. Said report shall be furnished to the Governing Board on an annual basis; in addition, the CEO shall further advise the Governing Board of any changes to said delegated authority, when said change occurs, at the next meeting of the Governing Board.

- B. **Scope of Delegations; Responsibility of Officers.** The delegation of authority to approve and award Procurements and Contracts are limited in scope and apply only to those Senior Officers and Authority staff to whom such authority has expressly been delegated herein. No Senior Officer or Authority staff to whom such authority has been delegated hereunder shall have the power or authority to further delegate such authority, or otherwise designate any other individual to carry out the approval and award of Procurements and Contracts authorized hereunder. In the exercise of the authority delegated to them under this Administrative Rule, the Senior Officers shall be subject to the authority and direction of, and fully accountable to, the Chief Executive Officer, who shall be fully accountable to the Governing Board for their actions, in the same manner as if such authority had been delegated to them by the Chief Executive Officer. Each individual to whom such authority has been delegated hereunder in excess of \$15,000.00 shall sign a “**Statement of Responsibility**” and will be held accountable for all actions occurring under their authority and shall be governed at all times by applicable State and Federal laws. Any person authorized to make purchases exceeding in

dollar amount or dollar value of \$15,000.00 shall file a statement of financial interest with the Supervisor of Elections in the jurisdiction within which he or she permanently resides.

4.4.6 A. **Bus Advertising Contracts.** Authority to approve and execute Bus Advertising Contracts shall be by the methods and in the maximum amounts specified below:

- A. **Level 1 Contracts.** The Governing Board hereby delegates to the Chief Executive Officer the authority to approve and execute, on behalf of the Governing Board and in accordance with these Administrative Rules and applicable law, Bus Advertising Contracts with (i) a dollar value or dollar amount not to exceed \$180,000.00 in the aggregate, and (ii) a term, including any option to extend or renew, not to exceed twelve (12) months. Legal approval is waived for these Level 1 Bus Advertising Contracts only on the premise that the standard printed form provided by Authority general counsel is used. Any addendum or modification from the standard printed form will require legal review and approval. Level 1 Contracts shall be reviewed after six months by the Authority and/or Authority general counsel. The CEO may delegate such authority in writing to the General Manager, Chief Administration Officer or Chief Financial Officer.
- B. **Level 2 Contracts.** The Governing Board hereby delegates to the Chief Executive Officer the authority to approve and execute, on behalf of the Governing Board and in accordance with these Administrative Rules and applicable law, Bus Advertising Contracts with a dollar value or dollar amount not to exceed \$300,000.00 in the aggregate, provided that the contracts receive prior approval by Authority general counsel.
- C. **Level 3 Contracts.** All other bus advertising contracts shall require and be reviewed by Authority general counsel and approved by the Governing Board.
- D. **Aggregate.** All dollar amounts and terms above are based on dealings with a single customer and shall be considered in the aggregate when classifying within each level. No bus advertising contracts shall be artificially divided so as to fall within Level 1 or Level 2 thresholds.
- E. **Bus Trades.** In the event the Bus Advertising Contract involves a Bus Trade, then the following provisions will apply:
  - 1. Subject to the further provisions set forth below, all Bus Trades are subject to the same level of approval as is the Bus Advertising Contract. Thus, for example, if the Contract being considered is a Level 3 Contract, then the Governing Board must approve the Bus Trade.

2. Subject to any further delegation by the CEO, the CEO will be required to approve all Bus Trades.
3. The CEO may in writing delegate his/her authority to approve Bus Trades in accordance with the level of approval set forth for the Bus Advertising Contracts.

F. **Notice to Governing Board.**

1. A summary of new Bus Advertising Contracts (not previously furnished to the Governing Board as an information or other item) shall be provided as information items with the Governing Board meeting documents.
2. There shall be presented to the Governing Board on an annual basis an annual report of all the Bus Advertising Contracts then outstanding and entered into during the previous year.

4.4.6 B. **Other Advertising Contracts (Bus Shelters, etc.)** Authority to approve and execute Bus Advertising Contracts shall be by the methods and in the maximum amounts specified below:

- G. **Level 1 Contracts.** The Governing Board hereby delegates to the Chief Executive Officer the authority to approve and execute, on behalf of the Governing Board and in accordance with these Administrative Rules and applicable law, Advertising Contracts with (i) a dollar value or dollar amount not to exceed \$180,000.00 in the aggregate, and (ii) a term, including any option to extend or renew, not to exceed twelve (12) months. Legal approval is waived for these Level 1 Advertising Contracts only on the premise that the standard printed form provided by Authority general counsel is used. Any addendum or modification from the standard printed form will require legal review and approval. Level 1 Contracts shall be reviewed after six months by the Authority and/or Authority general counsel. The CEO may delegate such authority in writing to the General Manager, Chief Administration Officer or Chief Financial Officer.
- H. **Level 2 Contracts.** The Governing Board hereby delegates to the Chief Executive Officer the authority to approve and execute, on behalf of the Governing Board and in accordance with these Administrative Rules and applicable law, Advertising Contracts with a dollar value or dollar amount not to exceed \$300,000.00 in the aggregate, provided that the contracts receive prior approval by Authority general counsel.
- I. **Level 3 Contracts.** All other Advertising Contracts shall require and be reviewed by Authority general counsel and approved by the Governing Board.

- J. **Aggregate.** All dollar amounts and terms above are based on dealings with a single customer and shall be considered in the aggregate when classifying within each level. No Advertising Contracts shall be artificially divided so as to fall within Level 1 or Level 2 thresholds.
- K. **Trades.** In the event the Advertising Contract involves a Trade, then the following provisions will apply:
1. Subject to the further provisions set forth below, all Trades are subject to the same level of approval as is the Advertising Contract. Thus, for example, if the Contract being considered is a Level 3 Contract, then the Governing Board must approve the Trade.
  2. Subject to any further delegation by the CEO, the CEO will be required to approve all Trades.
  3. The CEO may in writing delegate his/her authority to approve Trades in accordance with the level of approval set forth for the Advertising Contracts.
- L. **Notice to Governing Board.**
1. A summary of new Advertising Contracts (not previously furnished to the Governing Board as an information or other item) shall be provided as information items with the Governing Board meeting documents.
  2. There shall be presented to the Governing Board on an annual basis an annual report of all the Advertising Contracts then outstanding and entered into during the previous year.

#### 4.4.7 **Emergency Procurements.**

- A. The Chief Executive Officer may enter into Emergency Contracts if the amount involved is \$150,000 or less. If the amount exceeds \$150,000, the approval of the Chairman, or in his/her absence the Vice Chairman, will be required. If either the Chairman or the Vice Chairman is not available and the circumstances of the Emergency are such that the CEO reasonably determines that further delay would be materially adverse to the Authority of the public interest, then the CEO will have authority to prove and execute the Emergency Contract, even in excess of \$150,000.
- B. Authority is also provided to the Chairman of the Board or in his/her absence, to the Vice Chairman, to execute Emergency Contracts. Further, in the absence of the CEO, the Chairman or in his/her absence, the Vice Chairman may delegate authority to execute an Emergency Contract to any other Senior Officer to approve and execute an Emergency Contract.

- C. Subject to the rules of the FTA and the State of Florida, as applicable, in case of any Emergency, the Administrative Rules, including any required competitive bidding, are hereby waived to the extent needed to meet and address the Emergency.
- D. The Senior Staff shall to the extent possible keep the Governing Board, and particularly the Chairman of the Board, if feasible, advised and informed regarding the Emergency, and the efforts undertaken by the Authority to address said emergency.
- E. The authority provided under these Administrative Rules to address any emergency shall apply during the term of the Emergency.
- F. Documentation of any such Emergency shall be maintained, and the Chief Executive Officer shall advise the Governing Board of the Emergency as soon as practicable (and in any event within ten (10) days after said Emergency has arisen as well as the action taken) and will further keep the Chairman and his/her absence, the Vice Chairman, advised of the Emergency on a continuing basis. Further, the CEO will brief the Governing Board of said Emergency at the next meeting of the Governing Board as a discussion item.

4.4.8 **Revenue Contracts.**

- A. Revenue Contracts are generally those contracts which do not involve the acquisition of goods or services by the Authority and do not involve the payment of funds by the Authority. Said Revenue Contracts generally involve contracts whereby the Authority will provide to a third party the right to use property or privileges of the Authority in exchange for the payment of funds or other value to the Authority.
- B. Subject to the further provisions set forth below, all Revenue Contracts shall be deemed to be Major Contracts which require the approval of the Governing Board.
- C. Notwithstanding the foregoing, the Chief Executive Officer may approve Revenue Contracts provided both (i) the value of said Revenue Contract, including options, does not exceed \$150,000.00, and (ii) the term of the Revenue Contract does not exceed 5 years. In considering the approval of any Revenue Contract, the following standards will be applicable:
  - 1. The competitive bidding procedures for the Authority shall apply, if applicable.
  - 2. The Authority shall seek to obtain the highest and best value for the Authority.

- D. Revenue contracts which are not submitted to the Governing Board for their approval shall be noticed at the next meeting of the Governing Board as an information item.

#### 4.4.9 **Fuel Contracts.**

- A. The Governing Board finds that the procurement of fuel by the Authority is both an absolute necessity for the Authority to fulfill and meet its public purpose, and also that the procurement of fuel is subject to the market risks and shifts from time to time, particularly due to price variations. Therefore, the Authority must be prepared in acquiring fuel to be able to adjust to and meet market conditions from time to time.

The Governing Board will from time to time approve Contracts with vendors to supply fuel to the Authority. In regard to said process:

1. The selection of said vendors will generally be by the competitive bidding process.
2. More than one vendor can be selected and different vendors can be selected for different type of fuel purchases. For example, a separate vendor can be selected based on Oil Price Information Service (“**OPIS**”) pricing or spot market pricing, and other vendors can be selected to furnish the Authority fuel based on future contracts (generally meaning the purchase of fuel for delivery thirty (30) days or more in the future). Upon Governing Board approval, the Contracts can be executed by the CEO or other authorized officers as set forth in this Rule. The approval however by the Governing Board of any such Contracts and their execution will not constitute any obligation on the part of the Authority to purchase any fuel thereunder; those Contracts will simply constitute the approval for the Authority, if it chooses, to purchase fuel from the vendors who are party to the Contracts in accordance with the terms therein (including the pricing terms therein).
3. If the Authority has entered into a Contract with a vendor for the purchase of fuel using OPIS or spot price market pricing, the CEO, any other Senior Officer or the Director of Procurement is hereby authorized to purchase fuel under said Contract, provided that the fuel is for the present use of the Authority and it can be used up by the Authority within seven (7) days.
4. If the Authority has entered into a Contract with a vendor for the purchase of future contracts, the CEO shall have the authority to make said purchases provided that the price for fuel so acquired is within the budget approved by the Governing Board for fuel purchases for that particular year. The foregoing sentence will be

met if the CEO is of the reasonable opinion that the price per gallon contained in said future contracts, along with other existing and contemplated purchases by the Authority, will not cause the approved budget amount for fuel purchases to be exceeded for that fiscal year.

- B. The Governing Board will generally on a two-year basis renew the guidelines or process by which the Authority may seek to acquire fuel for the Authority's operations as set forth in Part A above.
- C. If the Governing Board has first approved a Contract for the purchase of fuel, then, as specifically provided in Part A above, the so designated Authority representative may purchase fuel and/or future contracts under that Contract without further authorization from the Governing Board. The amount of fuel and/or future contracts that the Authority may purchase pursuant to the foregoing authority shall not exceed the total amount that the Governing Board has budgeted for fuel for the period to which the purchase relates (taking into account all other purchases of fuel and/or fuel futures contracts for such period).

If at any time the Authority staff reasonably believes that the Authority's budget for fuel purposes could be exceeded by the Authority's fuel requirements for that fiscal year, then, in that event, no further purchases of fuels can be made until either (i) the Governing Board readjusts its budget or addresses the situation, or (ii) the Chairman approves the further purchases.

#### 4.4.10 **Simplified Acquisition Procurements.**

- A. No purchase of goods, consultant services, services and/or construction shall be artificially divided so as to fall within this Simplified Acquisition Procurements exemption.
- B. Simplified Acquisition Procurements include any Procurement with an amount of \$50,000.00 or less.
  - 1. Procurements with an amount of \$3,000.00 (or such other amount as may be modified from time to time in Federal guidelines) or less do not require quotes. However, such Procurements are expected to be well distributed between Vendors.
  - 2. Procurements with an amount greater than \$3,000.00 (or such other amount as may be modified from time to time in Federal guidelines) require a Request for Quotation (RFQ) or other competitive bidding process as authorized herein. Purchases shall be made on the basis of at least two written quotations. The written quote may be emailed, faxed or mailed to Authority. The written quote must clearly identify the Vendor making the quote and the

total price being quoted. Summary quotes must be included within the text of the requisition, and the original quote received shall be retained by the department for future reference. Quote prices will not be released to competing Vendors until final determination for the Procurement has been made.

- C. Simplified Acquisition Procurements may be formally bid at the discretion of the Director of Procurement. If bid, then all applicable terms of this Administrative Rule shall apply.

4.4.11 **Purchasing Card Program**. The Authority hereby establishes a “**Purchasing Card Program**” designed to improve efficiency in processing low dollar purchases of commodities with an aggregate amount not to exceed \$3,000.00 (or such amount as may be provided from time to time in the Federal guidelines) per purchase. This will allow the cardholder to purchase approved commodities and services directly from Vendors within the transaction limits established for each cardholder. Each Procurement card shall be issued to a named individual. The Authority shall be clearly shown on the card as the governmental buyer of goods and services. Subject in all events to the other provisions of these Administrative Rules, the Procurement Department may establish further details of the Purchasing Card Program and/or establish internal controls so that purchasing cards are used only for authorized purposes, and to provide a convenient and adequate small order purchasing system for the Authority’s employees.

4.4.12 **Short-Term Bus Service Agreements**. The Chief Executive Officer or his designee may enter into an agreement to provide bus services to a third party, without first obtaining the approval of the Governing Board, if all of the following four conditions A, B, C and D are met:

- A. The Chief Executive Officer or his designee determines that the agreement must be entered into before the next regularly scheduled meeting of the Governing Board;
- B. In exchange for providing the services, the Authority will receive its standard hourly rate for bus services that it charges to third parties;
- C. The term of the agreement does not exceed six months; and
- D. The dollar value of the agreement does not exceed \$500,000 or if the Chairman of the Governing Board first consents to the entry into the agreement, then, in that case, there shall be no dollar limitation.

The Chief Executive Officer will advise the Governing Board of the agreement or the renewal, as applicable, at the next regularly scheduled meeting of the Governing Board.

4.4.13 **Financially Exigent Agreements**. The Chief Executive Officer may enter into an agreement or renew an existing agreement, notwithstanding the fact that

entering into the agreement or renewing the existing agreement would otherwise require the prior approval of the Governing Board, if both of the following conditions A and B are met:

- A. Financially Exigent Situation will be created as a result of waiting for the next regularly scheduled meeting of the Governing Board to approve the agreement or approve the renewal of the existing agreement; and
- B. Either (i) the dollar value of the agreement or the renewal is less than \$150,000 or (ii) if the dollar value of the agreement is \$150,000 or more, then the Chairman of the Governing Board first consents to the entry into the agreement or the renewal of the existing agreement.

The Chief Executive Officer will advise the Governing Board of the agreement or the renewal, as applicable, as soon as practicable (and in any event within ten (10) days after said action has been taken); in addition, the CEO will brief the Governing Board of said action at the next of the Governing Board. In the absence of the CEO, the Chairman of the Governing Board may designate any other Senior Officer to execute any Financially Exigent Agreement.

#### 4.5. **Form of Contracts/Execution/Etc.**

- 4.5.1 **Form Contracts/Changes.** It is the intent of the Authority to the extent possible to use form contracts to facilitate the Procurement process. The Chief Executive Officer and/or Authority's legal counsel to the Authority may approve changes to a base form contract which has been previously approved by the Governing Board provided that (i) such changes, read together, do not cause such contract, instrument or other obligation to be materially different (creating a negative financial impact or increasing liability or obligation of the Authority) from the form approved by the Governing Board, or (ii) the Governing Board expressly authorizes the Chief Executive Officer and/or legal counsel, as the case may be, to approve such changes in the resolution or motion approving the form of the contract.
- 4.5.2 **Execution of Contracts.** Any Contract, instrument or other obligation requiring Governing Board approval, which has been so approved as provided in these Administrative Rules, shall be executed by the person or persons set forth in these Administrative Rules, or, as an alternative, as set forth in any resolution adopted by the Governing Board. No other employee of the Authority has any authority to execute any such contracts.
- 4.5.3 **Contract Amount/Monitoring of Amount.** All Contracts shall indicate on their face the dollar value or dollar amount, if any, which shall not exceed the dollar amount or dollar value, if any, approved by the Governing Board or as specifically provided herein. The Procurement Department will be responsible for ensuring the Contract amount does not exceed such stated value or dollar amount and the scope of service originally approved by the Governing Board.

4.5.4 **Project Contingency.** The Governing Board may elect to approve a Project Contingency for certain Procurements or capital improvement projects that may require contingent additional costs. The Chief Executive Officer, or through his or her written delegation the Chief Financial Officer, shall have the authority to authorize Change Orders for use of a Project Contingency subject to the following requirements:

- A. Change Orders shall not exceed ten percent (10%) of the original Contract amount approved by the Governing Board.
- B. Change Orders shall not exceed \$150,000.00 (for any single change, claim or amendment).
- C. All Change Orders relating to a particular project shall not exceed fifty percent (50%) of the approved Project Contingency (in the aggregate).
- D. Once fifty percent (50%) of the Project Contingency has been utilized, only the Governing Board, may authorize use of the remaining fifty percent (50%) of the Project Contingency, unless the Chief Executive Officer determines that a delay in authorization of the expense will result in substantial delay or additional cost to the Authority, in which case, the CEO may authorize said expense from the Project Contingency, but will so inform the Governing Board at the next meeting as an information item.
- E. Direct Pay purchases shall not constitute Change Orders to the extent that they solely involve changes to line items in the Contract.
- F. The Governing Board may modify or waive the requirements of this Subsection 4.5.4 in the Contract award.
- G. Any Change Order, claim, amendment or expenditure of Project Contingency, as provided herein, shall be noticed to the Governing Board as an information item at the next scheduled meeting of the Governing Board. Any proposed increase in the Project Contingency, for purposes of modifying the authority of the Chief Executive Officer under this Subsection 4.5.4, must be presented for approval to the Governing Board prior to authorization.

4.6. **Process for Competitive Bidding.**

4.6.1 **Invitation for Bid versus Request for Proposal.** The decision as to whether to use an IFB, RFP, or other solicitation method for a particular Procurement shall be made by either the Director of Procurement or the Chief Executive Officer. Any decision made by the Director of Procurement may be overridden by the Chief Executive Officer. The Director of Procurement and/or the Chief Executive Officer shall take the following factors into account in making his or her decision:

- A. Competitive bidding through an Invitation for Bid will be the preferred method for a Procurement when:
  - 1. Precise specifications of the needed product or services are known and can be described in the Invitation for Bid;
  - 2. Price is the only variable; and
  - 3. The Director of Procurement and/or the Chief Executive Officer determines that the IFB process best serves the Authority's interests.
  
- B. A Request for Proposal is appropriate when the exact product or service needed by the Authority is not specifically predetermined. RFPs shall provide a statement of need or service description for achieving a described goal of the Authority, which proposed solutions are sought. RFPs may include specifications, scope of services, and proposed contractual terms and conditions to which a Proposer must respond. RFPs may encourage the Proposal of alternative specifications, scope of services, and proposed contractual terms and conditions if such alternatives are proposed by a Proposer as the best method of meeting the need stated or achieving the described goal of the Authority.

4.6.2 **Authorization to Issue an Invitation for Bid or Request for Proposal.** The Governing Board must approve the issuance and award of all RFPs and IFBs where the dollar value of the goods or services to be obtained thereby is in excess of \$150,000; **provided, however,** that the Chief Executive Officer may approve the issuance (but not award) of any such RFP or IFB absent Board authorization (regardless of dollar value) if either of the following two conditions is met and the Governing Board is notified about the issuance of the RFP or IFB at its next regularly scheduled meeting:

- A. The Procurement to which the RFP or IFB relates is contemplated or set forth in the annual budget approved by the Governing Board; or
- B. The Chairman of the Governing Board has first consented to the issuance of the RFP or IFB.

The Governing Board may impose any additional or different conditions on any bid or proposal process under these Administrative Rules.

4.6.3 **The Bid Process.**

- A. The specific Department Director shall identify the desired item(s) and shall submit a written request to the Director of Procurement. All specifications, budget information, independent cost estimate and relevant information shall be included.

- B. The Procurement Department shall put the Procurement request into the proper form and complete the advertisement and Bid/contractual documents.
- C. The department requesting the item(s) will develop the specifications for review by the Procurement Department.
- D. All bids will be publicly opened at the prescribed date and time and recorded on the bid tabulation form at the time of the bid opening.
- E. When available, standard legal documents developed by the attorneys for the Authority shall be utilized. Standard legal documents or contracts shall not be modified without the approval of the Chief Executive Officer, who may delegate such authority to the Director of Procurement.
- F. The consideration of all bids shall be based on the requirements set forth in the Invitation to Bid as well as the responsiveness and responsibility of the bidder. In all cases, Authority reserves the right to select any bid deemed in the best interest of Authority, or to reject any or all bids.

#### 4.6.4 **The Proposal Process.**

- A. The specific Department Director shall identify the desired Procurement and shall submit a written request to the Director of Procurement. All specifications and/or scope of work, budget information, independent cost estimate and relevant information shall be provided before the solicitation is issued by the Procurement Department.
- B. The Director of Procurement and the requesting department will then jointly develop the evaluation criteria. The evaluation criteria must include price as one element.
- C. The evaluation of all Proposals shall be based on the requirements set forth in the Request for Proposal. Proposals from responsible Proposers will be evaluated and ranked for the purposes of selecting a Proposal for a potential award based on the criteria listed by their relative degree of importance.
- D. The selection of responsive and responsible Proposers “short listed”, or to be awarded a Contract, or to be recommended for award to the Authority Board of Directors, will be based upon the evaluation requirements and process set forth in the Request for Proposal.

#### 4.6.5 Source Evaluation Committee.

Prior to the issuance of an RFP, the Director of Procurement may choose to establish a Source Evaluation Committee (SEC) in order to evaluate Proposals and to make recommendations as to whether and to whom a Contract should be

awarded. Subject to any conditions imposed by the Governing Board, the Director of Procurement may appoint such individuals (within or without the Authority) to be a member of a SEC.

- A. The Director of Procurement or his or her designee will assist the members of the SEC in their responsibilities by providing instructions and guidance and obtaining responses to technical issues should they be raised.
- B. The Director of Procurement shall appoint one member of the SEC to be the Chairperson of the Committee.
- C. The Procurement Department will send a “No Conflict of Interest Certification” letter to the SEC members and each member shall return an executed copy to the Procurement Department. The SEC members who have executed the “No Conflict of Interest Certification” will be provided with all of the “responsive” proposals received for the RFP and evaluation forms specific to the member and each Proposal received. It is a condition to being on the SEC that the “No Conflict of Interest Certification” be completed. If a proposed member of the SEC fails to execute such a document, the Director of Procurement may appoint a replacement on the SEC.
- D. The SEC members shall each review the received proposals and each member will independently score each proposal based upon the evaluation criteria defined in the RFP. All proposals shall be scored prior to the SEC meeting.
- E. During the initial evaluation of the Proposals, the members of the SEC shall safe guard the proposals and not discuss any proposals with anyone outside of the Procurement Department.
- F. The Director of Procurement or designee will oversee the SEC meetings, but that person is not a member of the SEC. This person is responsible to ensure the process is conducted in accordance with current policies and procedures.
- G. The Director of Procurement or designee will schedule the SEC meeting. Each Proposer will be notified of the time, date and place of the SEC meetings. These meeting are open to the public in accordance with Florida’s Government in the Sunshine Law and unless otherwise stated by the Director of Procurement, all Proposers and members of the public may attend the meeting and observe the procurement process. Public comments will not be permitted at the SEC meetings as the SEC is carrying out a function that is executive in nature.
- H. The SEC may hold meetings in private in compliance with the Florida's Government in the Sunshine Law.

#### 4.6.6 **Process for Award of Bid.**

- A. The Contract may be awarded to the Responsible and Responsive Bidder who submits the lowest bid price. The Contract shall be awarded by means of a written notice to such Bidder. The Authority shall reserve the right to reject all Bids or to elect not to proceed.
- B. A Bidder may be determined non-Responsible or non-Responsive for failing to meet the requirements of any IFB, any provision of the Administrative Rules, policies, or procedures of the Authority, or applicable law, which determination shall be made in the sole and exclusive judgment of the Authority. The unreasonable failure of a Bidder to promptly supply information in connection with an inquiry may be grounds for a determination that the Bidder is non-Responsible or non-Responsive with respect to a Procurement.
- C. Recommendation Status for Bids:
  - 1. Staff shall recommend award to the responsive and responsible bidder whose bid is determined to be the most advantageous to the Authority. In the event only one responsive and responsible bid is received, the Authority reserves the right to award to the single Bidder after conducting successful negotiations with the bidder, readvertise the Invitation for Bid, or elect not to proceed.
- D. Qualifications/Standards of Bidders:
  - 1. All awards made by the Authority, whether obtained by Invitation for Bid/advertisement, Proposal, or Quotation, or any other method, shall consider whether the prospective Vendor meets the standard of qualification. Factors to be considered in determining whether the standard of qualification has been met shall include whether a prospective contractor/vendor has:
    - a. 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. The legal ability to contract with the Authority; and
    - e. Supplied all necessary information in connection with the inquiry concerning responsibility including, but not limited to any licenses, permits, or organization papers required.

2. The prospective Vendor shall supply information requested by the Authority concerning qualifications. If such Vendor fails to timely supply the requested information, the Authority shall base the determination of qualification upon any available information, or may find the prospective Vendor not qualified if such failure is unreasonable.
- 4.6.7 **Selection.** Procurements, with an amount equal to or in excess of \$50,000.00 shall be competitively bid and awarded based on the submission of sealed Bids or Proposals, except as otherwise expressly provided herein. All Procurements with a dollar value or dollar amount of \$50,000.00 or less may be obtained pursuant to the process for Simplified Acquisition Procurements in Subsection 4.4.10.
- A. Nothing in the foregoing shall prohibit the Authority from renewing Contracts with Contractors originally selected through a competitive selection process or original sole source determination, provided such renewal is within the scope of the original Contract.
  - B. An Invitation for Bid, Request for Proposal or other solicitation may be postponed or cancelled by the Authority at any time in the sole discretion of the Authority.
  - C. With respect to any Invitation for Bid, Request for Proposals or other solicitation the Bid(s)/Proposal(s) or specific Bidder(s)/Proposer(s) determined to be non-Responsible/non-Responsive may be rejected in whole or in part, by the Authority.
  - D. The procedures required herein may be departed from by the Authority in any manner that is reasonable in the event of an emergency, or in order to comply with Federal or State requirements
- 4.6.8 **Procurement of Certain Consultant and Professional Services.** To the extent that the Procurement of certain consultant or professional services is subject to the application of Florida Statutes § 287.055, or any successor provision thereof (the “**Consultants Competitive Negotiation Act**”), such Procurement shall be conducted in accordance with such provisions of such law.
- 4.6.9 **Sales Tax Recovery and Shared Cost Savings.** The Authority may utilize the sales tax recovery system and/or shared cost savings authorized under general law when it procures goods and services for the construction of new or renovated facilities when deemed to be in the best interest of the Authority. Pursuant to such sales tax recovery system, Procurements may be made through the Authority on behalf of its contractors without the use of the competitive procedures provided under this Administrative Rule, to the extent authorized by law.
- 4.6.10 The Governing Board at all times may in its discretion as to any particular bid or contract change or modify the procedures for said matter, notwithstanding that they conflict with these Administrative Rules.

4.7. **Cone of Silence.**

4.7.1 A “Cone of Silence” shall be in effect for each solicitation over \$50,000.00 in value from the date of advertising to the date of award. During this time, contact of any type by any vendor, interested party or representative thereof with any Authority Board of Directors Member, any Authority employee (exclusive of those Authority employees specifically exempted in the solicitation document), or any SEC Member to discuss the solicitation is prohibited.

4.7.2 The Governing Board may impose sanctions upon any vendor, representative thereof or interested party who is found to have violated the provision of this Section 4.7. Vendor(s) found in violation shall be disqualified from further consideration of the solicitation and may be Suspended or Debarred from participating in future solicitation opportunities.

4.8. **Background Checks and Investigations.** Submission by any Vendor of a Bid, Proposal or other response to a solicitation of goods or services constitutes consent by such Vendor to background checks, investigations or other inquiries by the Authority.

4.9. **Specifications.** All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage maximum free and open competition in satisfying the Authority’s need. Prospective suppliers may be required to be pre-qualified for particular types of supplies or services. Solicitation mailing lists of potential contractors shall include, but not be limited to, such pre-qualified suppliers. This Section shall not be read to preclude the Authority from standardization on a name-brand product.

4.9.1 **Brand Name and/or Equal Specifications.** Use of a brand name or equal specification may be restrictive of product competition. Therefore, such use may be limited to instances when the Authority makes a determination that only the identified brand name(s) item(s) and/or equal specifications will satisfy the Authority’s needs or where a Procurement has been standardized pursuant to the Purchasing and Contracts Procedures. When appropriate, to ensure full and open competition the specification should not state only a “**Brand Name**” product without listing its salient characteristics and not allowing “**An Equal**” product to be offered. If only one Vendor can supply the requirement, the Procurement shall be made as a Sole Source in accordance with Subsection 4.3.4.

4.10. **General Provisions Document.** The Procurement Department will establish a “**General Provisions Document**” which will contain certain guidelines of the Authority and statutory and regulatory requirements contained in the FTA Master Agreement and Best Practice Procurement Manual or similar document established by FTA rule or policy. The “**General Provisions Document**” will be referenced in the Authority’s Procurement solicitations. The “**General Provisions Document**” may be made available on the Authority’s website for viewing or in printed form at a minimal copy cost. Vendors that are awarded Contracts shall comply with and be subject to the provisions set forth in the “**General Provisions Document.**”

- 4.11. **Bonding Requirements.** The Procurement Department may require a Bidder or Contractor to furnish bid bonds, performance bonds and/or payment bonds in amounts determined by the Procurement Department.
- 4.12. **Geographic Preferences.** Procurements made subject to FTA requirements will be conducted in a manner that prohibits the use of statutorily or administratively imposed in-state or local geographical vendor preferences. Procurements made subject to Florida State Statute, FS-2387.055 (Consultants Competitive Negotiation Act) may include geographic preference professional services included in the Statute, so long as its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- 4.13. **Contract Administration.** FTA funded projects shall comply with the FTA Circular 4220.1F, Third Party Contracting Requirements as may be amended, supplemented, updated or replaced from time to time, or any other applicable FTA rule or policy. As a condition of all Contracts pertaining to Procurements made pursuant to this Administrative Rule, all parties thereto shall act in good faith in the performance thereof.
- 4.14. **Suspension, Debarment, Protest, Appeal & Remedies.**
- 4.14.1 **Authority.** The Chief Executive Officer or Governing Board may Suspend or Debar for cause the right of a vendor or principals of a vendor, to be included on a Vendor List and any Bid or Proposal from that Vendor may be rejected, provided that the Governing Board shall have the authority to waive or rescind such Suspension or Debarment. The Suspension or Debarment shall be final and conclusive unless the suspended or debarred Vendor initiates protest proceedings pursuant to this Section within thirty (30) business days after the date of notification.
- 4.14.2 **Suspension.** A Vendor may be suspended for a period not to exceed three (3) years as determined by the Chief Executive Officer or Governing Board based upon the following: default; fraud or misrepresentation; conviction by a court of a criminal offense or any other offense indicating a lack of business integrity; insolvency; violation of the ethical standards imposed under State or Federal law; failure to comply with the DBE participation or DBE requirements as may be established in an awarded Contract; violation of the Cone of Silence during a solicitation process; or any other cause the Chief Executive Officer or Governing Board determines to be sufficiently serious and compelling as to materially and adversely affect responsibility of a Vendor, including but not limited to suspension or debarment by another governmental entity for cause.
- 4.14.3 **Debarment.** A Vendor may be permanently debarred for the following:
- A. Default or failure to fully comply with the conditions, specifications, drawings, time limits, or terms of an Invitation to Bid, Request for Proposals or Contract with the Authority twice in any three-year period.

B. Conviction or judgment in a court for commission of any offense listed in Subsection 4.14.5 in connection with the Vendor's commercial enterprise. If the conviction or judgment is reversed through the appellate process, the Debarment shall be removed immediately upon written notification and proof of final court disposition from the Vendor to the Authority.

4.14.4 **Decision.** After the Chief Executive Officer or Governing Board has determined to suspend or debar a Vendor, the Chief Executive Officer shall cause the Director of Procurement to notify the Vendor in writing of the Debarment or the period of Suspension and the reasons for the action taken.

4.14.5 **Public Entity Crime.** Any Vendor who has been convicted of a public entity crime as defined by Florida Statutes § 287.133, or any successor provision, shall not be able to transact business with the Authority to the extent specified in Florida Statutes § 287.133(3)(a).

4.15. **Remedies for Solicitations or Awards in Violation of Law.**

4.15.1 If, prior to Bid or Proposal opening or the closing date for receipt of Proposals, the Director of Procurement, after consultation with legal counsel, determines that a solicitation is in violation of Federal or State law, the solicitation shall be canceled or revised to comply with applicable law.

4.15.2 If, after Bid or Proposal opening or the closing date for receipt of Proposals, the Director of Procurement, after consultation with legal counsel, determines that a solicitation or a proposed award of a contract is in violation of Federal or State law, the solicitation or proposed award shall be canceled.

4.15.3 If, after an award, the Director of Procurement, after consultation with legal counsel, determines that a solicitation or award of a contract was in violation of Federal or State law, action shall be taken as required by the provisions of the law violated, or, if no specific action is required, then:

A. If the person awarded the Contract has not acted fraudulently or in bad faith:

1. The Contract may be ratified and affirmed, provided it is determined that so doing is in the best interests of the Authority, or

2. The Contract may be terminated and the person awarded the Contract may be compensated for the actual expenses reasonably incurred under the Contract prior to the termination.

B. If the person awarded the Contract has acted fraudulently or in bad faith, or in violation of the Authority's rules, the contract may be declared null and void or voidable, if such action is in the best interest of the Authority. In the event of a dispute regarding the nature of or the characterization of

the awarded person's conduct, the prevailing party shall be entitled to attorney's fees and court costs, relating to the litigation of said dispute.

4.16. **Personal Property Management.** "**Personal Property**" is defined as items used (not consumed) to produce goods and services supporting Authority's mission. Personal Property includes, but is not limited to, office equipment, industrial plant equipment, vehicles, rolling stock, material handling equipment, information technology equipment and other types of "**Assets**" with an original cost or value of \$300.00 or more, with a normal life expectancy of one (1) year or more, which is not fixed in place, not part of a structure or facility and is practical to identify by marking. Personal Property management includes control, tracking and proper disposition.

4.16.1 Authority may assign a property officer to manage the organization's Personal Property program. This position will be responsible for the supervision, control, and disposition of Personal Property and will serve as the agency's custodian of surplus property.

4.16.2 All property purchased with any percentage of FTA participation must follow FTA guidelines for the Management of Real Property, Equipment and Supplies per chapter II of the FTA Grant Management Guidelines Number C 5010.1C. Disposition requirements are based on market value of surplus property and normally require FTA notification.

A. **Surplus Property Disposition.** After classifying Personal Property as "**Surplus**", the custodian can dispose of the Personal Property, in accordance with FTA and State guidelines.

4.16.3 Governing Board Members, chiefs, management and employees will ensure that in donating surplus property in accordance with FTA and State guidelines, all ethical regulations and principles will be considered and adhered to.

4.16.4 The Governing Board must approve any sale or transfer of surplus property with a value of \$5,000.00 or more.

4.17. **Metric System.** For Procurements involving Federal funds, the Authority will accept property and services with dimensions expressed in metric requirements, to the extent practicable and feasible, in compliance with the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. Sections 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," June 25, 1991, 15 U.S.C. Section 205a note; and applicable Federal regulations.

4.18. **Unsolicited Proposals**

4.18.1 **Definition.** The term "**unsolicited proposal**" means a written proposal for a new or innovative idea that is submitted to the Authority on the initiative of an offeror for the purpose of obtaining a contract with the Authority, and is not in response to a request for proposal, invitation to bid, or any other Authority-initiated solicitation or program.

4.18.2 **Requirements.** A valid unsolicited proposal must:

- A. Be innovative and unique;
- B. Be independently originated and developed by the offeror;
- C. Be prepared without the Authority's supervision, endorsement, direction, or direct Authority involvement, except for preliminary meetings with the Authority's staff for informational purposes and/or requests for information; and
- D. Include sufficient detail to permit a determination that Authority support could be worthwhile and the proposed work is essential to the Authority's mission responsibilities.

4.18.3 **Applicability of Public Records Act.** Offerors should be aware that all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business by the Authority are public records under the Public Records Act, Chapter 119, Florida Statutes, and, therefore, unsolicited proposals may constitute public records. Offerors should also be aware that while certain laws may prohibit the release of trade secret information by the Authority, in order to be applicable, the owner of such trade secrets must take reasonable measures to prevent trade secrets from becoming available to persons other than those selected by the owner to have access thereof for limited purposes (which measures may include prominently labeling each page of an unsolicited proposal where trade secret information appears as being "TRADE SECRET CONFIDENTIAL"). This paragraph is not intended to nor should it be construed to constitute legal advice or an obligation for the Authority or the Authority's staff to undertake any particular action. If an offeror would like to protect its trade secret information it should consult with an attorney to determine how best to do so.

4.18.4 **Content of Unsolicited Proposals.** Unsolicited proposals shall contain the following information to permit consideration in an objective and timely manner:

A. **Basic information:**

- 1. Offeror's name, address and type of organization, e.g., profit, non-profit, educational, small business;
- 2. Names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;
- 3. Identification of proprietary data to be used only for evaluation purposes;

4. Names of other federal, state, or local agencies or parties receiving the proposal or funding the proposed effort;
5. Date of submission; and
6. Signature of the person authorized to represent and contractually obligate the offeror.

**B. Additional Information Required:**

1. Concise title and abstract (preferably fewer than 200 words) of the proposed effort;
2. A reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to be employed, the nature and extent of the anticipated results, and the manner in which the work is essential to support accomplishment of the Authority's mission;
3. Names and biographical information on the offeror's key personnel who would be involved, including alternates;
4. Type of support needed, if any, from the Authority, e.g., facilities, equipment, materials, financial or personnel resources;
5. Financial plan that includes in sufficient detail for meaningful evaluation: (a) proposed price or total estimated cost for the effort; and (b) identifies all required funding sources and timing of funding;
6. Period of time for which the proposal is valid (six (6) month minimum);
7. Type of contract preferred;
8. Proposed duration of effort;
9. Brief description of the organization, previous experience, relevant past performance, and facilities used;
10. Other statements, if applicable, about organizational conflicts of interest, security clearances, and environmental impacts; and
11. The names and telephone numbers of Authority technical or other Authority points of contact already contacted regarding the unsolicited proposal.

**C. Evaluation Fee:**

1. An initial evaluation fee of Twenty Five Thousand Dollars (\$25,000) payable to the Central Florida Regional Transportation Authority d/b/a LYNX must accompany each unsolicited proposal (the “**Initial Fee**”). Proposals received without the Initial Fee will not be accepted. The Initial Fee may be waived in whole or in part by the Authority’s Chief Executive Officer. Unsolicited proposals submitted by governmental entities shall be exempt from the payment of any fees.
2. Payment of the Initial Fee and any additional fees shall be made by business check, cashier’s check, or any other non-cancelable instrument. Personal checks will not be accepted.
3. If the Initial Fee is not sufficient to pay the Authority’s costs of evaluating the unsolicited proposal, the Authority shall request in writing such additional amounts as determined by the Authority’s Chief Executive Officer. The public-private partnership or private entity submitting the proposal shall pay the requested additional fee within thirty (30) days of receiving the request. Failure to pay the additional fee shall result in the proposal being rejected.
4. The Authority shall refund any fees in excess of the costs of evaluating the proposal after the evaluation is complete. The cost of evaluating the proposal is equal to the amount of all out-of-pocket costs incurred by the Authority in its review (including all fees and expenses paid by the Authority to outside consultants) and the amount of all labor costs incurred by the Authority for the Authority personnel to participate in the review. If the Authority personnel participating in the review are paid on an hourly basis, the labor cost will be equal to the sum of the number of hours that such employees spent on the review multiplied by their hourly pay. If the Authority personnel involved in the review are not paid on an hourly basis, the labor cost will be equal to the sum of the number of hours that such employees spent on the review multiplied by an hourly rate equal to the prorated cost of their annual salary.
5. The fee requirement can be waived if it conflicts with federal requirements or can be reduced by the Authority’s Chief Executive Officer if the Authority’s Chief Executive Officer determines that the estimated cost of evaluation will be less than the Initial Fee.
6. Unsolicited proposals valued at \$150,000 or less shall be exempt from the Initial Fee requirement in **Section 4.18.4(c)(1)**. However, the Authority’s Chief Executive Officer shall have the authority to require a fee to be paid by the offeror in the event that staff time

devoted to the unsolicited proposal is substantial, as determined by the Authority's Chief Executive Officer.

#### 4.18.5 **Authority Procedures**

A. **Acceptance and negotiation of an unsolicited proposal:** Within sixty (60) days of receipt of an unsolicited proposal and before initiating a comprehensive evaluation, the Authority's Chief Executive Officer shall determine if the proposal:

1. Is a valid unsolicited proposal, meeting the requirements of this **Section 4.18;**
2. Is essential to the Authority's mission;
3. Contains sufficient technical and cost information for evaluation; and
4. Has been approved by a responsible official or other representative authorized to obligate the offer contractually.

If the proposal meets these requirements, the Authority shall promptly acknowledge receipt and advertise for 30 days, in a newspaper of general circulation in one or more counties in the Authority's service territory, its receipt of the proposal and solicitation for any additional proposals or comments from interested parties. The advertisement shall not improperly disclose proprietary information or originality of thought or innovativeness of the property or services sought. Following the end of the advertisement period, the Authority shall begin to process any related unsolicited proposals. A favorable comprehensive evaluation of an unsolicited proposal does not, itself, justify awarding a contract without providing for full and open competition.

B. **Comprehensive Evaluation:**

1. When performing a comprehensive evaluation of an unsolicited proposal, evaluators (to be selected by the Authority's Chief Executive Officer) shall consider the following factors, in addition to any others appropriate for the particular proposal:
  - (i) Unique, innovative, and meritorious methods, approaches, or concepts demonstrated by the proposal;
  - (ii) Overall scientific, technical, or socioeconomic merits of the proposal;

- (iii) Potential contribution of the effort to the Authority's specific mission;
  - (iv) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these that are integral factors for achieving the proposal objectives;
  - (v) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel critical to achieving the proposal objectives; and
  - (vi) The realism of the proposed cost.
2. A favorable comprehensive evaluation of an unsolicited proposal does not, in itself, justify awarding a contract without providing for full and open competition.
  3. The Authority's staff shall have at least ninety (90) days from the close of the advertisement period to complete their comprehensive evaluation and provide their recommendation to the Authority's Governing Board, where a Major Contract may be awarded, or to the Authority's Chief Executive Officer, where a Minor Contract may be awarded. When deemed necessary due to the complexity of the issues or other special circumstances, this timeframe may be extended by the Authority's Chief Executive Officer.

4.18.5 **Contract Negotiations:** The Authority may commence negotiations on a sole source basis when an unsolicited proposal offers an innovative proprietary concept, has received a favorable comprehensive evaluation by the Authority's staff, has been deemed to be essential to accomplishing the Authority's objective, and the requirements for a sole-source procurement in accordance with this Administrative Rule 4 have been met.

4.18.6 **Contract Award:**

- A. The award and execution of any Major Contract resulting from an unsolicited proposal is subject to approval by the Authority's Governing Board. The award and execution of a Minor Contract resulting from an unsolicited proposal is subject to approval by the Authority's Chief Executive Officer.
- B. Prior to contract award, the Authority will publicize the intention to award a contract based on the unsolicited proposal or another proposal submitted in response to the publication provided in **Section 4.18.5(A)**.

4.18.7 **Rejection of Unsolicited Proposal**: The Authority shall return an unsolicited proposal to the offeror, citing reasons, when its substance:

- A. Is available to the Authority without restriction from another source;
- B. Closely resembles a proposed or pending competitive acquisition requirement;
- C. Is not essential to accomplishing the Authority's mission; or
- D. Does not demonstrate an innovative and unique method, approach, or concept, or is otherwise not deemed a meritorious proposal.

I hereby certify that the foregoing Administrative Rule 4 was adopted by the Governing Board of the Authority at its duly called meeting on March 22, 2012, and was amended by the Governing Board of the Authority at its duly called meetings on August 9, 2012 and May 22, 2014.



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Deborah Morrow, Assistant Secretary