



## **PROCUREMENT CODE**

### **Originally Adopted**

**May 16, 2007, Resolution No. 05-09-07**

### **Amendments**

**June 20, 2007, Resolution No. 06-11-07**

**November 15, 2007, Resolution No. 11-26-07**

**May 20, 2009, Resolution No. 05-15-09**

**May 19, 2010, Resolution No. 05-15-10**

**November 17, 2010, Resolution No. 11-60-10**

**June 15, 2011, Resolution No. 06-30-11**

**July 20, 2011, Resolution No. 07-41-11**

**October 16, 2013, Resolution No. 10-52-13**

**April 16, 2014, Resolution No. 04-17-14**

**May 20, 2015, Resolution No. 05-24-15**

**July 13, 2016, Resolution No. 07-19-16**

**September 26, 2018, Resolution No. XX-XX-18**

## **Section 1. Definitions.**

As used in this part, the term:

(1) "Alternative solicitation methods" includes all solicitation methods other than an Invitation to Bid.

(2) "Appointed QEC Member" means a person with specific experience or education related to the commodity or contract service being sought by competitive solicitation who is appointed to be a member of a QEC by the Executive Director. An Appointed QEC Member may be (a) an Authority employee; (b) a volunteer that is an employee of an airport that is a member of the Florida Airports Council; or (c) a volunteer that is an employee of a State of Florida agency, political subdivision, municipality or special district. If the Authority is procuring Design Professional Services, the Executive Director may retain a Design Professional in the same field as the Design Professional Services being sought by the Authority to be an Appointed QEC Member. Except for Authority employees, Appointed QEC Members serving on a QEC will be reimbursed by the Authority for expenses incurred as a result of serving on the QEC.

(3) "Auditor" is defined as provided in Section 218.31(15), Florida Statutes, as it may be amended from time to time.

(4) "Authority" means the Boca Raton Airport Authority.

(5) "Best price" means the best overall price for the Authority based on objective factors that include, but are not limited to, price, quality and design.

(6) "Best value" means the highest overall value to the Authority based on objective and subjective factors that include, but are not limited to, price, quality, design, workmanship, aesthetics and image, coherence with the surrounding community, originality and functionality.

(7) "Board" means the Members of the Boca Raton Airport Authority.

(8) "Commodity" means any of the following: various supplies, materials, goods, merchandise, food, equipment, information technology, vehicles, motor vehicles and other personal property, including a mobile home, trailer, or other portable structure.

(9) "Competitive sealed bids," "competitive sealed proposals," or "competitive sealed replies" means the process of receiving three or more sealed bids, proposals, or replies submitted by responsive vendors.

(10) "Competitive solicitation" means an invitation to bid, a request for proposals, a request for letters of interest, a request for qualifications or any other solicitation method that allows all qualified persons, firms or entities to submit a response that will be evaluated on the basis of either Best Price or Best Value if the response is determined to be Responsive and the person, firm or entity is determined to be a Responsible.

(11) "Competitive verbal solicitation" means the process of receiving three or more verbal bids, proposals or replies from responsive venders.

(12) "Contractor" means a person who contracts to sell commodities or contractual services to the Authority.

(13) "Contractual services" means the rendering by a contractor of its time and effort pursuant to a contract, rather than the supplying of specific commodities; however, contractual services may include the provision of commodities in conjunction with the service provided. The term applies only to those services rendered by individuals and firms who are independent contractors, and such services may include, but are not limited to evaluations, consultations, maintenance, accounting, security, management systems, management consulting, educational training programs, legal, research and development studies or reports on the findings of consultants, technical and social services, construction, renovation, repair, modification, or demolition of any facility, building, portion of building, utility, park, parking lot, or structure or other improvement to real property.

(14) "Design Professional Services" means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the State of Florida, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice. Design Professional Services also includes the Airport's General Consultant of Record and "consultant services" as defined or described in Federal Aviation Administration Advisory Circular 150/5100-14E dated September 25, 2015, as it may amended or superseded from time to time.

(15) "Electronic posting" or "electronically post" means the posting of solicitations, agency decisions or intended decisions, or other matters relating to procurement on a centralized Internet website designated by the Authority for this purpose.

(16) "Exempt meetings" means QEC meetings or portions of Board meetings in which respondents to Competitive Solicitations make presentations or answer questions, or at which negotiation strategies are discussed.

(17) "Grant Assurances" means the version of the Grant Assurances for Airport Sponsors in effect at the time of competitive solicitation.

(18) "Information technology" has the meaning ascribed in Section 282.0041, Florida Statutes, as it may be amended from time to time.

(19) "Invitation to bid" means a written solicitation for competitive sealed bids. The invitation to bid is used when the Authority is capable of specifically defining the scope of work for which a contractual service is required or when the Authority is capable of

establishing precise specifications defining the actual commodity or group of commodities required.

(20) "Executive Director" means the Executive Director, or his or her designee by written designation, provided that the designee must be an employee of the Authority.

(21) "Piggyback" or "Piggybacking" means procurement of goods and/or services by relying upon the terms and conditions of a contract made between another government entity and a vendor that was awarded the contract pursuant to a competitive solicitation.

(22) "Piggybacked Contract" means the contract on which the Authority wishes to piggyback.

(23) "Piggybacked Solicitation" means the competitive solicitation pursuant to which the Piggybacked Contract was made.

(24) "Procurement Code" means the Procurement Code for the Boca Raton Airport Authority originally adopted pursuant to Resolution Number 05-09-07, as it may be amended from time to time.

(25) "Professional Services" means any legal, accounting, engineering, architectural, insurance brokerage, marketing, advertising, human resources or consulting services, and includes Design Professional Services.

(26) "Proposer" means any person or entity that responds to a competitive solicitation issued by the Authority.

(27) "Qualifications Evaluation Committee" or "QEC" means a committee appointed by the Executive Director and composed of at least three members, including but not limited to the Executive Director or the Executive Director's designee, and two Appointed QEC Members..

(28) "Qualifying Project" is defined as provided in Section 255.065(1)(i), Florida Statutes, as it may be amended from time to time.

(29) "Renewal" means contracting with the same contractor for an additional contract period after the initial contract period.

(30) "Request for Letters of Interest" or "RLI" means a competitive solicitation method of selecting a vendor whereby all vendors are invited to submit a summary of their qualifications, a statement of their interest in performing the specific job or service and any other information requested by the Airport as a part of its shortlisting process, in conjunction with a proposal for the cost and/or price elements of the offer. From these Letters of Interest, the Executive Director determines which vendors are responsive to the RLI and those vendors shall be "shortlisted." The shortlisted vendors will be interviewed, evaluated and ranked. Notwithstanding the foregoing, this process may be

varied by the terms and conditions of any RLI to suit the specific procurement needs of the Authority.

(31) "Request for Proposals" or "RFP" means a written solicitation for competitive sealed proposals. The method of solicitation is used when it is not practicable for the Authority to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required and when the Authority is requesting that a responsible vendor propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation.

(32) "Request for Qualifications" or "RFQ" means a written solicitation for statements of qualification based on a respondent's qualifications and experience for a prescribed scope of professional services. This method of solicitation is used when professional skill and knowledge is the paramount concern of the Authority in seeking assistance from a contractor. An RFQ may not be used to procure goods, but may be used to procure services, other than Professional Services, only if approved by the Authority by resolution. The process of an RFQ involves the initial development of a Scope of Services, by the QEC. Once the Authority has received qualifications in accordance with the terms and conditions of the RFQ, the QEC shall convene to review each respondent's qualifications and experience, and then the QEC shall rank the respondents based on the qualifications and experience best suited to the RFQ's Scope of Services. After ranking, the Airport Executive Director, in consultation with Airport Legal Counsel, shall attempt to negotiate an agreement with the highest-ranked respondent to bring before the Board for approval. If an agreement cannot be reached with the highest ranked respondent within 30-days of ranking, the Airport Executive Director shall terminate negotiations with that respondent, and commence negotiations with the next-highest ranked respondent. If the RFQ is issued to procure Airport Legal Counsel services, then the Authority shall retain special counsel to act in place of the Airport Legal Counsel in negotiating an agreement for such services. The procurement of special counsel to negotiate an agreement with Airport Legal Counsel is exempt from this Procurement Code.

(33) "Responsible" means that a vendor has the capability in all respects to fully perform the contract requirements, and the integrity and reliability that will assure good faith performance.

(34) "Responsive" means a response to a solicitation that conforms in all material respects to the solicitation.

(35) "Comprehensive Agreement" is defined and described in Section 255.065(7), Florida Statutes, as it may be amended from time to time.

(36) "Interim Agreement" is defined and described in Section 255.065(6), Florida Statutes, as it may be amended from time to time.

(37) "Service Contract" means a contract between the Authority and a private entity which defines the terms of the services to be provided with respect to a Qualifying Project offered to the Authority through an Unsolicited Proposal.

(38) "Unsolicited Proposal" means a written application for a new or innovative idea submitted to the Authority on the initiative of the offeror for the purpose of obtaining a contract with the Authority, and is not in response to a request for proposal.

## **Section 2. Purchasing Categories**

The following purchasing categories are hereby created:

- (1) CATEGORY ONE: Less than \$10,000;
- (2) CATEGORY TWO: Greater than or equal to \$10,000 and less than \$20,000;
- (3) CATEGORY THREE: Greater than or equal to \$20,000 and less than \$50,000; and
- (4) CATEGORY FOUR: Greater than or equal to \$50,000.

## **Section 3. Procurement of Professional Services.**

(1) The Authority shall procure Design Professional Services through a Request for Qualifications consistent with the requirements of U.S. Department of Transportation Federal Aviation Administration Advisory Circular No. 150/5100-14E, as it may be amended from time to time.

(2) The Authority shall procure the services of an Auditor as provided in Section 218.391, Florida Statutes, as it may be amended from time to time.

(3) The Authority shall procure the services of Airport Legal Counsel through the use of a Request for Qualifications.

(4) The procurement of Special Legal Counsel (as opposed to Airport Legal Counsel) may be procured by the Executive Director, and taken to the Authority Board at the next regularly scheduled meeting for ratification.

## **Section 4. Procurement of commodities or contractual services**

(1)(a) All contracts for the purchase of commodities or contractual services requiring total expenditures falling within purchasing CATEGORY ONE may be awarded at the Executive Director's discretion.

(b) All contracts for the purchase of commodities or contractual services requiring total expenditures falling within purchasing CATEGORY TWO may be awarded by the Executive Director through competitive verbal solicitation. A verbal solicitation shall be made available to at least three vendors and must include sufficient detail in describing the commodities or contractual services sought to allow the vendor to submit a

response, the time and date for the receipt of the verbal bid or other response to the solicitation, and all contractual terms and conditions applicable to the procurement.

(c) All contracts for the purchase of commodities or contractual services requiring total expenditures falling within purchasing CATEGORY THREE may be awarded by the Executive Director through competitive solicitation. Such solicitation shall be made available simultaneously to at least three vendors and must include a description of the commodities or contractual services sought, the time and date for the receipt of the bid or other response to the solicitation, and all contractual terms and conditions applicable to the procurement.

(d) All contracts for the purchase of commodities or contractual services requiring total expenditures falling within purchasing CATEGORY FOUR shall be awarded by the Board through competitive solicitation. Such solicitation shall be made available simultaneously to all vendors and must include a description of the commodities or contractual services sought, the time and date for the receipt of bids and of the public opening, all contractual terms and conditions applicable to the procurement, the criteria to be used in determining acceptability of the bid, and the relative importance of price and other evaluation criteria. If the Authority contemplates renewal of the contract, that fact must be stated in the solicitation. The response to the solicitation shall include the price for each year for which the contract may be renewed. Evaluation of responses shall include consideration of the total cost for each year as submitted by the vendor.

(e) Provided that the total estimated annual expenditures by the Authority do not exceed the CATEGORY THREE threshold, contracts for the administration of employee benefits or employee services may be procured by the Executive Director without Competitive Solicitation. The Executive Director may award such contracts on the basis of Best Value. Contracts for the administration of employee benefits or employee services must contain provisions which allow the Authority to terminate for convenience and shall not exceed a term of five (5) years.

(f) All contracts for the purchase of commodities or contractual services shall be procured in accordance with applicable federal and/or state Grant Assurances.

(2)(a) Responses to Invitations to Bid for contracts for the purchase of commodities or contractual services shall be evaluated on the basis of best price. Responses to Invitations to Bid for contracts for the purchase of commodities or contractual services requiring total expenditures falling within purchasing CATEGORY FOUR shall be compiled and evaluated in writing by the Executive Director to determine which bidder will provide the best price to the Airport. The Executive Director shall present evaluation of the bids to the Board as a recommendation to award.

(b) Responses to Alternative Solicitation Methods for contracts for the purchase of commodities or contractual services may be evaluated on the basis of best price or best value. Responses to Alternative Solicitation Methods, other than Requests for

Qualification, for contracts for the purchase of commodities or contractual services requiring total expenditures falling within purchasing CATEGORY FOUR shall be evaluated by the Executive Director. The Executive Director may use a QEC to evaluate all or a portion of the responses to an Alternative Solicitation Method. After the Executive Director or QEC, as applicable, has completed evaluation of responses to an Alternative Solicitation Method, the Executive Director shall present the evaluation to the Board as a recommendation to award. Notwithstanding evaluation of responses by the Executive Director or a QEC, the Board may elect to re-evaluate the responses when the recommendation to award is brought before the Board.

(c) A competitive solicitation for the purchase of commodities or contractual services requiring total expenditures falling within purchasing CATEGORY FOUR that receives less than three responses by the submittal deadline may have the deadline for receipt of responses extended by a period of time sufficient to solicit additional responses or to ensure that all Proposers have a reasonable opportunity to respond, as determined by the Executive Director, unless otherwise provided for in writing by the Board.

(d) If less than three responses to a competitive solicitation are received, the Authority may contract on the best terms and conditions available. The Authority shall document the reasons that such action is in the best interest of the Airport in lieu of issuing a new competitive solicitation or extending the deadline for receipt of responses.

(3)(a) The competitive solicitation method used to award contracts for the purchase of commodities or contractual services shall be the Invitation to Bid method, unless the Executive Director or Board determines in writing that the use of an Invitation to Bid is not practicable or not in the best interest of the Authority.

(b) If the Executive Director determines that the use of an Invitation to Bid is not a practicable solicitation method or not in the best interest of the Authority, then the contract for the purchase of commodities or contractual services may be procured by RFP or RLI. The Executive Director or QEC, as applicable, may request additional assurances from respondents to an RFP or RLI. Any additional assurances or information provided by a respondent during the solicitation process shall constitute a part of their offer to the Authority. Interviews may be continued at the discretion of the Executive Director. Any and all assurances, representations and proposals made by respondent vendors will remain a valid offer to the Authority until a contract is awarded or for 120 days after receipt of the initial response, whichever occurs first.

(4) If an Alternative Solicitation Method does not include the contract to be entered into with the Authority, then the Executive Director, in consultation with the Airport Legal Counsel, shall commence negotiations with the highest ranked respondent. If the Executive Director and the highest-ranked respondent cannot agree on acceptable terms and conditions within thirty (30) days, then the Executive Director shall cease negotiations with that respondent and shall commence negotiations with the next-highest-ranked respondent. After negotiations are concluded, the Executive Director



may recommend the negotiated contract to the Board for approval with the recommendation to award. The Board may award the negotiated contract to the responsible and responsive offeror, or if the Board determines that the negotiated contract recommended for approval is not in the best interest of the Authority, then it may direct the Executive Director to recommence negotiations, or it may cancel the solicitation.

(5) The Executive Director may authorize change orders to contracts for the purchase of commodities or contractual services requiring total expenditures falling within purchasing CATEGORY FOUR if the change order at issue does not increase the contract price or sum more than \$10,000.

(6) All contracts for the purchase of commodities or contractual services shall include a requirement that the contractor shall comply with the Grant Assurances, regardless of whether the contract expressly includes such requirement.

(7) All solicitations issued pursuant to this Procurement Code shall include a requirement that an actual or prospective Proposer comply with any and all provisions of the Procurement Code, including the procedures for protest and appeal. The Airport Legal Counsel may take actions necessary to ensure compliance with the intent of this subsection.

(8) If the Authority receives an Unsolicited Proposal, the Authority may enter into a Interim Agreement, a Comprehensive Agreement and Service Contracts pursuant to the procedures set forth in Section 255.065, Florida Statutes, as it may be amended from time to time.

#### **Section 5. Authority's Right to Reject All Bids**

The Authority has the absolute right to reject all bids, proposals or replies at any time during the procurement or protest process.

#### **Section 6. Emergency Procurement**

If the Executive Director determines in writing that an immediate danger to the public health, safety, or welfare or other substantial loss to the Authority requires emergency action, then the Executive Director may proceed with the procurement of commodities or contractual services necessitated by the immediate danger, without receiving competitive sealed bids, competitive sealed proposals, or competitive sealed replies. The Executive Director shall take the emergency procurement to the Board at the next regularly scheduled meeting for ratification.

#### **Section 7. Single Source Procurement**

Commodities or contractual services available only from a single source may be excepted from competitive solicitation requirements. When the Authority believes that commodities or contractual services are available only from a single source, the Executive Director shall electronically post a description of the commodities or contractual services sought for a period of at least seven (7) calendar days. The

description must include a request that prospective vendors provide information regarding their ability to supply the commodities or contractual services described. If it is determined by the Executive Director, after reviewing any information received from prospective vendors, that the commodities or contractual services are available only from a single source, the Executive Director shall enter into negotiations with the single source vendor or contractor to obtain the best price for the Airport. The Executive Director shall bring that negotiated contract to the Board for award.

#### **Section 8. Procurement Through Piggybacking.**

The Authority may award contracts by Piggybacking, subject to the following limitations:

- (1) The purchase of goods or services is under contract with a federal, state or municipal government.
- (2) The government entity party to the Piggybacked Contract utilized a competitive process similar to the Authority's.
- (3) The Piggybacked Contract term is current.
- (4) The Authority accepts the terms and conditions specified within the Piggybacked Contract.
- (5) The contractor extends the terms and conditions of the contract to the Authority.
- (6) The Piggybacked Contract must have requested in its solicitation:
  - a. Disclosure of criminal background of the vendor; and
  - b. A scope of services that is applicable to the work to be performed for the Authority and/or the Airport.
- (7) The terms and conditions of the contract entered into by the Authority must be similar to the Piggybacked Contract, except that the terms and conditions may be more restrictive upon the vendor to the extent necessary to meet the specific requirements of the Authority and/or the Airport.
- (8) The government entity party to the Piggybacked Contract must have jurisdiction in the State of Florida.

#### **Section 9. Stay of Procurements During Protests.**

In the event of a timely protest pursuant to Section 11, the Airport may elect not to proceed further with the solicitation or award of the contract until a written decision with respect to the protest is made by the Executive Director as provided in Section 10.

#### **Section 10. Condition Precedent to Civil Action to Protest**

Exhaustion of the administrative remedies provided for in Sections 10 through 12 of the Procurement Code constitutes an absolute condition precedent to the filing of a civil action against the Boca Raton Airport Authority in connection with its solicitation for or procurement of commodities or contractual services.

### **Section 11. Executive Director Review of Protested Solicitations and Proposed Awards.**

Any actual or prospective Proposer who has a substantial interest in and is aggrieved in connection with a solicitation, a finding of non-responsiveness, a failure to be shortlisted, the Proposer's ranking or a proposed award of a contract may protest via a letter to the Executive Director. Any basis or ground for a protest not set forth in the letter of protest required under this section shall be deemed waived. The Executive Director shall have the authority to settle and resolve the protest if such a settlement or resolution is practicable in the Executive Director's opinion. If the protest is not resolved by mutual agreement, the Executive Director shall promptly issue a decision in writing, after consulting with the Airport Legal Counsel. The decision shall state the reasons for the action taken and inform the protestant of his or her right to Administrative review and of the appeal security requirements. A copy of this decision shall be mailed or otherwise furnished to the protestant.

### **Section 12. Limitations on Protests and Appeals.**

(1) Any actual or prospective Proposer to a competitive solicitation who has a substantial interest in, and is aggrieved in connection with, solicitation specifications or requirements must protest in writing to the Executive Director, as provided in Section 1.10, within seven (7) calendar days after such actual or prospective Proposer knew or should have known the facts giving rise to the protest.

(2) Any Proposer to a competitive solicitation aggrieved by a finding of non-responsiveness, a failure to be shortlisted, the Proposer's ranking or a proposed award must protest in writing to the Executive Director, as provided in Section 10, within seven (7) calendar days after such Proposer knew or should have known the facts giving rise to the protest.

(3) Any person or entity wishing to appeal the decision of the Executive Director issued pursuant to Section 10 shall deliver an appeal to the Chairperson at the office of the Authority within seven (7) calendar days of the receipt or posting of such decision, whichever is earlier, with copies of the appeal being delivered to the Airport Legal Counsel and Executive Director on the same day as the appeal is delivered to the Chairperson. Any appeal made pursuant to this subsection shall state and explain all of the bases for such appeal and indicate any facts, documents and/or statements of relevant persons appellant believes support the stated bases for appeal. Any bases not detailed in the appeal will be abandoned and waived by the appellant.

(4) Failure to protest or appeal within the timeframes set forth in this Section shall constitute an absolute waiver of the right to protest or appeal.

### **Section 13. Administrative Appeal of Decisions by the Executive Director.**

(1) After receipt of an appeal, the Airport Legal Counsel shall randomly select a hearing officer from the list of hearing officers maintained pursuant to Section 13, and shall notify the hearing officer of the selection. The hearing officer shall perform a conflict check to ensure that adjudicating the issue would not present a conflict of interest. The

Airport Legal Counsel shall compile, bind and deliver the record on appeal to the hearing officer and the appellant. Intervenor may purchase a copy of the record on appeal for \$50. The hearing officer shall work with the parties to schedule a hearing within thirty (30) days of clearance of conflicts.

(2) Any appeal of the Executive Director's decision must be accompanied by acceptable collateral to secure the appeal pursuant to Section 12(3). Failure to deliver this collateral in full compliance with Section 12(3) by the expiration of the deadline for appeal set forth in Section 11(3) shall constitute an absolute waiver of the right to appeal.

(3) To secure the costs and attorneys' fees incurred by the Authority in defending an appeal, the appellant shall deliver to the Authority acceptable collateral in an amount equal to the greater of

(a) \$5,000; or

(b) 10% of the value of one year of the financial terms of appellant's bid or proposal. If the appellant's proposal involves a ground lease, then the value of one year of the financial terms is equal to the first year of base rent that is not discounted or abated.

As used herein, "acceptable collateral" means a money order, certified check, or cashier's check, payable to Boca Raton Airport Authority, or a letter of credit or appeal bond in a form acceptable to Airport Legal Counsel. The Airport Legal Counsel may require that the collateral be accompanied by documentation to ensure that the Authority's interests are protected.

(4) The procedure for the hearing required by this article shall be:

(a) The hearing officer shall serve upon the Airport Legal Counsel, the appellant and any intervenors a notice of hearing, stating the time and place of the hearing. The notice of hearing shall be sent by email attachment, facsimile and U.S. Mail to the Airport Legal Counsel, the appellant and any intervenors;

(b) The appellant shall have the right to be represented by counsel, to call and examine witnesses, to introduce exhibits, to examine opposing witnesses on any relevant matter, even though the matter was not covered under direct examination, and to impeach any witness regardless of which party first called the witness to testify;

(c) In any hearing before the hearing officer, irrelevant, immaterial or unduly repetitious evidence shall be excluded. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible whether or not such evidence would be admissible in a trial in the courts of Florida. Hearsay evidence is admissible, but hearsay evidence is not sufficient, without corroborating non-hearsay evidence, to prove a material fact.

(d) When all parties are represented by counsel, upon a written motion made at least ten (10) days prior to when a hearing is scheduled, the hearing officer may allow interrogatories of the parties who have personal knowledge of the facts giving rise to the appeal. Sworn and complete answers to interrogatories shall be served within seven (7) calendar days of receipt.

(e) Within fifteen (15) days from the hearing, the hearing officer shall complete and submit to the Authority and the appellant a final order consisting of the findings of fact and conclusions of law as to the granting or denial of the appeal. The hearing officer shall uphold or reverse the decision giving rise to such protest but may not grant any allied, additional, alternative, or supplemental relief in the same order.

(g) All hearings shall be held in Boca Raton, Florida and Florida law will apply.

(h) Upon timely and proper written motion of the Authority or the appellant, the hearing officer shall award costs to the prevailing party in the protest. As used herein, "prevailing party" means the party in whose favor the hearing officer issues an order or the party adverse to a party that abandons or dismisses their appeal, provided that in neither case shall an intervenor be considered a "prevailing party." Costs include but are not limited to the hearing officer's fee, hearing room rental fee, copying costs, any costs of discovery, postage for letters or communications sent during the course of the protest, and any other costs normally considered costs pursuant to Chapter 57, Florida Statutes. The hearing officer shall issue an order on a motion for costs and attorneys' fees pursuant to this subsection within fifteen (15) of receipt of the written motion.

(i) The appellant is responsible for bringing a court reporter to the hearing before the hearing officer if the appellant would like to appeal the hearing officer's decision pursuant to Section 14.

(5) The hearing officer shall make a directed decision against any party that fails to answer interrogatories posed by the other party or make any witnesses or documents available to the other party for the hearing when the other party has made a reasonable request in writing for such witnesses or documents.

#### **Section 14. Hearing Officers**

The Authority shall maintain a list of potential hearing officers to hear appeals pursuant to Section 12. Hearing officers must be active members of the Florida Bar and must have been admitted to the Florida Bar for at least 5 years.

#### **Section 15. Appeals**

An appeal of the Executive Director's decision pursuant to Section 12 must be concluded prior to the institution of any civil action regarding the same subject matter. Appeal from the decision of the hearing officer shall be by certiorari to the circuit court in

accordance with the Florida Rules of Appellate Procedure and shall be based on the record established before the hearing officer.

#### **Section 16. Procurement Code Cone of Silence**

(1) Any verbal or written communication between a Proposer or its representatives, employees or agents and the Authority or any of its members, or the Executive Director or any of Executive Director's staff, consultants or agents regarding a solicitation is strictly prohibited from the date of advertisement of the solicitation through the award of a contract or the final ranking of respondents, whichever occurs first.

(2) The following exceptions apply to the cone of silence set forth in subsection (1):

(a) the written response to the solicitation, including bids, proposals and letters of interest;

(b) communications expressly allowed by the solicitation;

(c) any communication made pursuant to Sections 10, 11 or 12 of the Procurement Code;

(d) any communication made with Airport Legal Counsel; and

(e) any communications made on the record at a public noticed meeting of the Board.

(3) Any person or entity that communicates with the Authority or any of its members, or the Executive Director or any of Executive Director's staff, consultants or agents regarding a solicitation during the cone of silence, and is not a Proposer at the time of such communication, but later becomes a Proposer with regard to the solicitation, shall be deemed to have violated the cone of silence.

(4) Any violation of the requirements of this Section shall immediately and permanently disqualify the violator from being considered for the solicitation pursuant to which the violation occurred.

#### **Section 17. Public Records and Sunshine Laws**

(1) Competitive Sealed Bids, Proposals and Replies are temporarily exempt from public records disclosure pursuant to Section 119.071, Florida Statutes, until the Airport Executive Director or PC awards or recommends award or until thirty (30) days pass from opening the Competitive Sealed Bid, Proposal or Reply, whichever occurs first.

(2) Prior to the expiration of the temporary exemption provided for in subsection (1), if the Authority elects to reject all bids, proposals or replies in accordance with Section 5 and concurrently expresses its intent to re-issue the Competitive Solicitation, then the Competitive Sealed Bids, Proposals or Replies that were rejected are temporarily

exempt from public records disclosure pursuant to Section 119.071, Florida Statutes, until the first to occur of the following:

- (a) the Airport Executive Director or PC awards or recommends award of the re-issued Competitive Solicitation;
- (b) the Authority withdraws the re-issued Competitive Solicitation; or
- (c) one (1) year passes from the date of on which the Authority provides notice of its election to reject all bids, proposals or replies.

(3) All Exempt Meetings:

- (a) are exempt from the requirements of Section 286.011, Florida Statutes; and
- (b) shall be audio or video recorded.

(4) Recordings of Exempt Meetings and public records presented during such Exempt Meetings are temporarily exempt from public records disclosure until the PC recommends award or until thirty (30) days pass from opening the Competitive Sealed Bid, Proposal or Reply, whichever occurs first.

(5) Prior to the expiration of the temporary exemption provided for in subsection (4), if the Authority elects to reject all bids, proposals or replies in accordance with Section 5 and concurrently expresses its intent to re-issue the Competitive Solicitation, then recordings of Exempt Meetings and public records presented during such Exempt Meetings are temporarily exempt from public records disclosure pursuant to Section 119.071, Florida Statutes, until the first to occur of the following:

- (a) the Airport Executive Director or PC awards or recommends award of the re-issued Competitive Solicitation;
- (b) the Authority withdraws the re-issued Competitive Solicitation; or
- (c) one (1) year passes from the date of on which the Authority provides notice of its election to reject all bids, proposals or replies.

**Section 18. Conflict of Interest**

(1) BRAA has adopted a Conflict of Interest Policy found in the BRAA Employee Handbook Section 1. No employee, officer, or agent may participate in the selection, award, or administration of a contract by BRAA if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of BRAA may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.