



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. 09-25-18

December 18, 2019, Resolution No. 12-27-19

Section 1. Definitions.

As used in this part, the term:

- 1) "Alternative solicitation methods" includes all solicitation methods other than an Invitation to Bid and Request for Proposal.
- 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. When the Authority is procuring an auditor, the QEC Members shall be appointed as provided in Section 218.391, Florida Statutes, as may be amended from time to time.
- 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, design, and vendor's history of performance with the Authority, notwithstanding whether the vendor is considered "Responsible".
- 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, vendor's history of performance with the Authority, notwithstanding whether the vendor is considered "Responsible", as well as aesthetics and image, coherence with the surrounding community, originality, and functionality.
- 7) "Board" means the Members of the Boca Raton Airport Authority.
- 8) "Change Order" means a written document effectuating a change in the Contract Price, a change in the Contract Time or a material change in the Work, where the change in the Contract Time or material change in the Work causes the overall cost of the Contract to exceed the Contract Price.
- 9) "Commodity" means any of the following: various supplies, materials, goods, merchandise, food, equipment, information technology, vehicles, motor vehicles and other

personal property, including without limitation, a mobile home, trailer, or other portable structure.

10) "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.

11) "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 if the person, firm or entity is determined to be a Responsible.

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

13) "Contract Price" means the original amount established in the bid submittal and award by the Authority, including allowances, as may be amended by Change Order.

14) "Contract Time" means the original time between commencement and completion, including any milestone dates thereof, as may be amended by Change Order.

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

16) "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. 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.

17) "Design Criteria Professional Services" means those services performed by an architect, professional engineer, landscape architect, or registered surveyor and mapper related to the preparation of a design criteria package.

18) "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.

19) "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.

20) “Exempt meetings” means QEC meetings or Board meetings, or portions thereof, in which respondents to Competitive Solicitations make presentations or answer questions, or at which negotiation strategies are discussed.

21) “Grant Assurances” means the version of the Grant Assurances for Airport Sponsors in effect at the time of competitive solicitation.

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

23) "Invitation to bid" means a written solicitation for competitive sealed bids.

24) "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.

25) “Planning Services” means the services of program management, construction management, planning studies, and feasibility studies.

26) 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.

27) “Piggybacked Contract” means the contract on which the Authority wishes to piggyback.

28) “Piggybacked Solicitation” means the competitive solicitation pursuant to which the Piggybacked Contract was made.

29) “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.

30) "Professional Services" means 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. For the purposes of this Procurement Code, the term “professional services” also includes services within the scope of the practice of law and auditor services.

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

32) "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.

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

34) "Renewal" means contracting with the same contractor, under the same terms, for an additional contract period after the initial contract period.

35) "Request for Letters of Interest" or "RLI" means an alternative, 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.

36) "Request for Proposals" or "RFP" means a written solicitation for competitive sealed proposals 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.

37) "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 services.

38) "Responsible" means that a vendor has the present capability in all respects to fully perform the contract requirements, the integrity, and the reliability, that will assure good faith performance. Evidence of responsibility will include without limitation, the vendor's history of past performance, the vendor's complaint history, the vendor's history of litigation related to the provision of services, the number of years the vendor has been in the business of performing the service, and the technical and financial resources available to the vendor to perform the work.

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

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

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

42) "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, consistent with Section 255.056(3), Florida Statutes, as it may be amended from time to time.

43) "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 Authority.

1) The Executive Director has the authority to carry out all executive procurement functions including but not limited to the following: development of solicitation materials; advertisement of solicitations; cancellation or postponement of solicitations; authorization of short listings of responses when consistent with the procedures herein; evaluation of responses to solicitations when consistent with the procedures herein; determination whether responses are responsible and responsive; establishment of guidelines for determining ability to cure part or all of solicitation response deficiencies and any applicable remedy; determination of sole source procurements; negotiation of contracts, where negotiation is called for herein; administration of contracts; extension of contracts where the contract provides for unilateral extension by the Authority upon written notice; and all other procurement functions reasonably necessary to effectuate the provisions in this Procurement Code.

Section 3. Purchasing Categories.

1) The following purchasing categories are hereby created:

a) CATEGORY ONE: Less than or equal to \$10,000;

b) CATEGORY TWO: Greater than \$10,000 and less than or equal to \$35,000;

c) CATEGORY THREE: Greater than \$35,000 and less than or equal to \$65,000; and

d) CATEGORY FOUR: Greater than \$65,000.

2) a) All contracts for the purchase of commodities or contractual services requiring total expenditures falling within purchasing CATEGORY ONE shall 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 shall 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 shall be awarded by the Executive Director through written, 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 written, 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 Annual Budget allocation for such expenses, 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.

Section 4. Procurement of Professional Services and Planning Services.

1) 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.

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

3) 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.

4) The Authority shall procure the following through the use of a Request for Qualification, consistent with the "Consultants' Competitive Negotiation Act", Section 287.055, et. seq., Florida Statutes, and the requirements of U.S. Department of Transportation Federal Aviation Administration Advisory Circular No. 150/5100-14E, as they may be amended from time to time, to the extent they are applicable:

- a) Design Professional Services;
- b) Planning Services;
- c) Professional Services;
- d) Design Criteria Professional Services.

Section 5. Methods for procurement of commodities or contractual services.

1) 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) **Invitation to Bid.** The Invitation to Bid method of solicitation 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.

b) 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 her evaluation of the bids to the Board as a recommendation to award.

3) a) **Request for Proposal.** The Request for Proposal 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.

b) The Executive Director may choose to empanel a QEC to assist in the evaluation and ranking of RFP responses. RFP responses may be evaluated on the basis of Best Value or Best Price. Whether the RFP will be evaluated on the basis of Best Value or Best Price shall be specified in the RFP solicitation. The Executive Director shall present the

evaluation of the RFP responses, whether performed by her individually or by a QEC, to the Board as a recommendation to award. Notwithstanding the 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.

4) a) **Request for Qualifications.** The RFQ 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. The RFQ may not be based on price.

b) The process of an RFQ involves the initial development of a Scope of Services, by the Executive Director with the assistance of Airport Legal Counsel. 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 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 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 may 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.

5) a) **Alternative Solicitation Methods.** Alternative Solicitation Methods shall be used when, in the determination of the Executive Director, the Invitation to Bid and Request for Proposal methods of solicitation are inadequate to gather the information required to fairly evaluate solicitation responses or are otherwise not in the best interest of the Authority.

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. Whether the solicitation responses elicited under an Alternative Solicitation Method will be evaluated on the basis of Best Value or Best Price shall be specified in the solicitation. However, RFQ may not be based on price.

c) 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.

d) 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.

6) a) **QEC.** For those solicitation methods where a QEC is used, the Executive Director shall determine whether the QEC's review of the proposals shall include an interview with the respondents. Interviews may be continued at the discretion of the Executive Director. QEC meetings constitute formal actions, which shall take place in accordance with the Florida's Government-in-the-Sunshine Law, Chapter 286, Florida Statutes. Airport Legal Counsel shall not serve on a QEC, but shall serve in an advisory capacity to the QEC on legal and procedural matters. The QEC shall evaluate and rank respondents according to QEC evaluation scoring and ranking guidelines, as provided by the Executive Director.

b) The Executive Director or QEC, as applicable, may request additional detail from respondents to an RFP or an Alternative Solicitation Method regarding the response. Any information provided by a respondent during the solicitation process, including without limitation information provided during the interview process, if any, shall constitute a part of the respondent's offer to the Authority. Any and all 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.

Section 6. Inadequate Responses.

1) If less than three responses to a competitive solicitation are received, the Executive Director may choose in her sole discretion to reject all bids and cancel the solicitation, to issue a new competitive solicitation for the same project, to extend the deadline for additional responses to be submitted, or to recommend to the Board that it award a contract based on Best Price or Best Value, as applicable. The Executive Director 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.

Section 7. Change Orders and Contract Provisions.

1) Contracts for the purchase of commodities or contractual services requiring total expenditures falling within purchasing CATEGORY FOUR may include an allowance to address cost overruns or other unforeseen circumstances that affect the cost of the Project. Executive Director has the authority to modify Contract Time, as long as the modification does not affect the Contract Price. Additionally, Executive Director has the authority to modify the cost of work under the Contract, as long as the modification does not change the Contract Price including allowances, if any.

2) 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 sets forth such requirement.

Section 8. Unsolicited Proposals.

1) If the Authority receives an Unsolicited Proposal, the Authority may enter into an 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 9. Authority's Right to Reject All Bids.

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

Section 10. Emergency Procurement.

1) 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 11. Single Source Procurement.

1) 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) business days.

2) 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. For contracts meeting the dollar value thresholds for Category Three or Category Four, the Executive Director shall bring the negotiated contract to the Board for award.

Section 12. 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 13. Stay of Procurements during Protests.

- 1) In the event of a timely protest pursuant to Section 15, 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 15.

Section 14. Condition Precedent to Civil Action to Protest

- 1) Exhaustion of the administrative remedies provided for in Sections 15 through 19 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 15. Executive Director Review of Protested Solicitations and Proposed Awards.

- 1) 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 finding of non-responsibility, a failure to be shortlisted, the Proposer's ranking, or a proposed award of a contract, may protest by submitting a letter of protest to the Executive Director, delivered via certified or registered U.S. Mail, return receipt requested, to the Authority's administrative offices, 903 NW 35th Street, Boca Raton, FL 33431, Attn: Executive Director, with an electronic mail copy transmitted to airportauthority@bocaairport.com.
- 2) No protest shall be accepted challenging the chosen procurement method, the evaluation criteria, the relative weight of the evaluation criteria, or the formula specified for assigning points in any competitive selection process.
- 3) Only solicitations falling within CATEGORY FOUR are subject to protest.
- 4) Any basis or ground for a protest not set forth in the letter of protest required under this section shall be deemed waived.
- 5) 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.
- 6) If the protest is not resolved by mutual agreement, the Executive Director shall issue a decision in writing within ten (10) calendar days after receipt of the letter of protest, in consultation 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 16. Limitations on Protests and Appeals.

- 1) 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.
- 2) 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 serve a letter of protest to the Executive Director, as provided in Section 15, no later than 5:00 p.m. on the seventh calendar day after the Notice of Intent to Select/Award is posted on the Authority's website.

- 3) During a Protest, including any appeal thereof, no contact regarding the selection with Authority Board members, officers, or employees, other than the Executive Director and Airport Legal Counsel, is permitted by the protestant or any intervenor(s). Such communication will result in an automatic disqualification from selection for the pending solicitation.
- 4) Protestants and intervenors may be represented by legal counsel, at their own expense.
- 5) Any Proposer to a competitive solicitation aggrieved by a finding of non-responsiveness, a finding of non-responsibility, a failure to be shortlisted, the Proposer's ranking, or a proposed award, must serve a letter of protest to the Executive Director, as provided in Section 15, no later than 5:00 p.m. on the seventh calendar day after the Authority posts the Notice of Intent to Select/Award on the Authority's website.
- 6) Any person or entity wishing to appeal the decision of the Executive Director issued pursuant to Section 15 shall deliver an appeal to the Chairperson at the office of the Authority no later than 5:00 p.m. on the seventh calendar day after the receipt or posting of such decision, whichever is earlier, with copies of the appeal being delivered via certified or registered U.S. Mail, return receipt requested, to the Authority's administrative offices, 903 NW 35th Street, Boca Raton, FL 33431, Attn: Executive Director, and via electronic mail transmitted to airportauthority@bocaairport.com.
- 7) Each letter of protest must include the following information:
 - a) The name, postal and email address, telephone number of the protesting Respondent.
 - b) The solicitation title and number;
 - c) A concise statement indicating the grounds and evidence, including facts, rules, regulations, statutes, and constitutional provisions, the factual and legal basis, upon which the Protest is made. The Protest shall include all supporting documentation. Any bases not detailed in the appeal will be abandoned and waived by the appellant;
 - d) A statement of the specific ruling or relief requested; and
 - e) The signature of the Respondent or an authorized agent of the Response.
- 8) 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. However, the Authority reserves the right within the sole discretion of the Executive Director to extend any timeframe listed in the Policy. If timeframes are extended by the Authority, such extension shall be done in writing.

9) Once filed and received by the Authority, Protests, Request for Interventions, and Appeals may not be supplemented by the submitting party, however, the Authority may request clarification or additional information, as needed.

10) Respondents to a solicitation that is the subject of a Protest who are substantially affected by the Protest may intervene in the Protest by filing a written request for intervention via certified or registered U.S. Mail, return receipt requested, to the Authority's administrative offices, 903 NW 35th Street, Boca Raton, FL 33431, Attn: Executive Director, with an electronic mail copy transmitted to airportauthority@bocaairport.com, no later than 5:00 p.m. on the fifth calendar day after the Authority posts the Protest on its website. Documentation received after this time frame will not be considered.

11) A written Request for Intervention shall include the following information:

a) The name, postal and email address, telephone number of the intervening Respondent.

b) The solicitation title and number

c) A concise statement of the manner in which the intervening Respondent is substantially affected by the Protest;

d) A concise statement indicating the grounds and evidence, including facts, rules, regulations, statutes, and constitutional provisions, the factual and legal basis, upon which the Request for Intervention is made. The Request for Intervention shall include all supporting documentation. Any bases not detailed in the Request for Intervention will be abandoned and waived by the appellant.

e) A statement of the specific ruling or relief requested; and

f) The signature of the Respondent or an authorized agent of the Respondent.

Section 17. Administrative Appeal of Decisions by the Executive Director.

1) Appeals must include the following information:

a) The name, postal and email addresses, telephone number of the party filing the appeal;

b) The solicitation title and number;

c) A concise statement, including the grounds and evidence, facts, regulations, rules, statutes, and constitutional provisions, and the factual and legal basis upon which the appeal is based. Only those matters raised in the original Protest, and any Request for Intervention related thereto, may be considered on appeal;

- d) Statement of the specific ruling or relief requested; and
 - e) Signature of the party filing the appeal or an authorized agent of the party filing the appeal.
- 2) After receipt of an appeal, the Authority in consultation with the Airport Legal Counsel shall retain a hearing officer meeting the qualifications set forth in Section 18. The hearing officer shall perform a conflict check to ensure that adjudicating the issue would not present a conflict of interest.
- 3) The Airport Legal Counsel shall compile, bind, and deliver the record on appeal to the hearing officer and the appellant. Intervenor in the appeal may purchase a copy of the record on appeal for the actual cost of duplication. The hearing officer shall work with the parties to schedule a hearing within thirty (30) days of clearance of conflicts.
- 4) Any appeal of the Executive Director's decision must be accompanied by acceptable collateral to secure the appeal pursuant to Section 17(4). Failure to deliver this collateral in full compliance with subsection 3) of this Section, by the expiration of the deadline for appeal set forth in Section 16(4) shall constitute an absolute waiver of the right to appeal.
- 5) 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.

- 6) 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. The Authority shall post a notice of the hearing date, time, and location. The hearing will be open to the public;

b) The hearing shall be conducted *de novo*, based on the record. New information will not be introduced. However, the parties have the right to present argument related to the information contained in the record. However, evidence may be taken on the costs incurred by the Authority in conducting the hearing.

c) The burden of proof shall rest with the appellant. The standard of proof shall be whether the decision was clearly erroneous, arbitrary and capricious, fraudulent, or otherwise without basis in fact or law.

d) Within fifteen (15) days from the hearing, the hearing officer shall complete and submit to the Authority and the appellant a written, final order granting or denying the appeal, which shall contain findings of fact and conclusions of law. The hearing officer shall uphold or reverse the decision giving rise to such protest but may not grant any additional, alternative, or supplemental relief in the same order. The hearing officer's written order is final, and no motion for rehearing or reconsideration may be filed.

e) If the Authority prevails, the hearing officer shall assess against the appellant reasonable costs incurred by the Authority in convening the hearing, including the costs and fees of the hearing officer. The assessment of costs shall be set forth in the hearing officer's written decision. Costs assessed by the hearing officer shall be paid by the party that filed the appeal to the Authority within ten (10) days of the rendition of the hearing officer's written decision.

f) If a protest is upheld, the Executive Director or hearing officer may grant the following relief:

1. Cancellation of the solicitation and/or contract;
2. Instruction to re-compete the solicitation.

g) In no event will a contract be automatically awarded to a protestant if the protest is upheld or to an appellant if the appeal is granted. Nothing herein shall prevent the Authority, at its sole discretion, from providing for an alternative remedy that is in the best interest of the Authority and in compliance with applicable law.

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

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 19.

Section 18. Hearing Officers

1) Hearing officers must be active members of the Florida Bar and must have been admitted to the Florida Bar for at least 5 years. Hearing officers must have relevant

experience in the area of law applicable to the nature of the protest, including without limitation, public procurement, public construction, or aviation.

Section 19. Appeals

1) An appeal of the Executive Director's decision pursuant to Section 17 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 petition for writ of certiorari within thirty days of rendition of the hearing officer's written decision 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 20. 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, the Executive Director, or any of Executive Director's staff, consultants, or agents, including without limitation members of QEC, 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, including without limitation any interviews conducted during the solicitation evaluation;

c) Any communication made pursuant to Sections 14, 15 or 16 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, 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 21. 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 Executive Director 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 Executive Director awards or recommends award of the reissued 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 meetings identified as exempt under Section 286.0113, Florida Statutes:
 - 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 Executive Director 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 9 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 Executive Director awards or recommends award of the reissued Competitive Solicitation;
 - b) The Authority withdraws the re-issued Competitive Solicitation; or
 - c) One (1) year passes from the date on which the Authority provides notice of its election to reject all bids, proposals or replies.

Section 22. Conflict of Interest

1) BRAA has adopted a Conflict of Interest Policy found in the BRAA Employee Handbook. Employees shall comply with the Conflict of Interest Policy set forth in the BRAA Employee Handbook with respect to procurement matters. Board members shall not 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 Board member, or 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. Board members may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

Section 23. Advertisement.

1) All CATEGORY FOUR competitive solicitations will be advertised, as provided herein, and all hearings regarding competitive solicitations will be publicly noticed, as required by federal and state law, as applicable.

Section 24. Preference to Businesses with Drug-Free Workplaces

1) Preference shall be given to businesses with drug-free workplaces, consistent with the requirements of Section 287.087, Florida Statutes, as may be amended from time to time, whenever two or more bids, proposals, or replies are equal with respect to price, quality, and service.

2) Businesses entitled to receive drug-free workplace preference shall certify that the business has implemented a drug-free work place program, which shall have at minimum:

a) A published statement notifying employees that the unlawful manufacture, distribution, dispensing, possessing, or use of controlled substances is prohibited in the workplace and specifying the actions that will be taken against employees for violating the prohibition;

b) Inform employees about the dangers of drug abuse in the work places, the business's policy of maintaining a drug-free workplace, any available counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed on employees for drug-abuse violations;

c) Give each employee engaged in providing the bid services a copy of the statement specified herein;

d) Notify the employees working on the bid services that, as a condition of working on the project, the employee will abide by the terms of the statement and will notify the employer of any conviction of , or plea of guilty or no lo contendere to, any violation of Chapter 893, Florida Statutes, or of any controlled substance

law of the United States or any state, for a violation occurring in the workplace no later than 5 days after such conviction;

e) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community by any employee who is so convicted;

f) Make a good faith effort to continue to maintain a drug-free workplace through implementation of the drug-free workplace program.

Section 25. Preference to Florida Businesses.

1) All contracts for the purchase of personal property through competitive solicitation shall comply with Section 287.084, Florida Statutes, Preferences to Florida Businesses, as may be amended from time to time, unless otherwise superseded by Federal law.

Section 26. Prohibited Businesses.

1) Florida law contains limitations on businesses with which public entities like the Authority may do business. The Authority shall comply with all applicable laws governing prohibited businesses, including without limitation Sections 287.133, Florida Statutes, governing businesses placed on the public entity crimes convicted vendor list, and Section 287.135, Florida Statutes, governing scrutinized companies, as those statutes may be amended from time to time. Limitations on businesses that may transact business with the Authority shall be set forth in the Authority's solicitation documents and in the Authority's contract documents.