



BOCA RATON AIRPORT AUTHORITY PROCUREMENT CODE

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Amendments

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

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Section 1. Definitions.

As used in this part, the term:

(1) "Alternative solicitation methods" include Requests for Proposals and Requests for Letters of Interest, but do not include Invitation to Bid.

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

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

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

(5) "Best value" means the highest overall value to the Airport 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.

(6) "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.

(7) "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.

(8) "Competitive solicitation" means an invitation to bid, a request for proposals, or a request for letters of interest.

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

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

(11) "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.

(12) "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.

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

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

(15) "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.

(16) "Manager" means the Airport Manager, or his or her designee in the event of an emergency.

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

(18) "Professional services" is defined as provided in Section 287.055(2)(a), Florida Statutes, as it may be amended from time to time.

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

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

(21) "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 PC determines which vendors are responsive to the RLI and those vendors shall be "shortlisted." The shortlisted letters of interest and attached proposals are compiled by the Manager for review by the Authority. The shortlisted vendors are then interviewed and ranked by the Authority. 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.

(22) "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 Manager or 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.

(23) "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.

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

(25) "Procurement Committee" or "PC" means a two-person committee authorized to evaluate either the responsiveness alone or the responsiveness, responsibility and relative quality, merit and appropriateness of responses to Alternative Solicitation Methods utilized for procurements falling within purchasing CATEGORY FOUR. For procurement related to capital improvement projects, the PC is composed of the Chair of the standing committee responsible for the particular capital project and the Manager. For procurement not related to capital improvement projects, the PC is composed of the Chair of the Auditing Committee and the Manager.

Section 2. Purchasing Categories

The following purchasing categories are hereby created:

- (1) CATEGORY ONE: Less than \$2,500;
- (2) CATEGORY TWO: Greater than or equal to \$2,500 and less than \$10,000;
- (3) CATEGORY THREE: Greater than or equal to \$10,000 and less than \$50,000; and
- (4) CATEGORY FOUR: Greater than or equal to \$50,000.

Section 3. Procurement of professional services and auditor.

(1) The Authority may procure Professional Services as provided in Section 287.055, Florida Statutes, if the costs of those services fall within the thresholds set forth therein. If the cost of Professional Services does not fall within the thresholds set forth in Section 287.055, Florida Statutes, then those Professional Services shall be procured as provided in the Procurement Code.

(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.

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 Manager'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 Manager 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 Manager 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 Authority 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.

(2)(a) 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 Manager to determine which bidder will provide the best price to the Airport. 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 evaluated on the basis of best price. The Manager shall report in writing the results of his evaluation of the bids to the Authority in conjunction with his recommendation for award of the contract.

(b) Responses to alternative solicitation methods for contracts for the purchase of commodities or contractual services requiring total expenditures falling within purchasing CATEGORY FOUR shall be compiled in writing by the Manager for

evaluation by the PC or the Authority depending upon the specific procedures of the solicitation. Responses to Alternative Solicitation Methods for contracts for the purchase of commodities or contractual services requiring total expenditures falling within purchasing CATEGORY FOUR may be evaluated on the basis of best price or best value. Airport Legal Counsel and the General Consultant of Record shall sit as advisors to the PC and/or to the Authority. Notwithstanding evaluation of responses by an PC, the Authority may elect to re-evaluate the responses when the recommendation of the PC is brought before the Authority for award.

(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 Airport Manager, unless otherwise provided for in writing by the Authority.

(d) If less than three responses to a competitive solicitation are received, the Manager or Authority may contract on the best terms and conditions available. The Manager or 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 Manager or Authority 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 Manager or Authority 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 one of the following methods:

(i) The RFP solicitation method may be utilized to procure commodities or contractual services.

(ii) The RLI solicitation method may only be utilized to procure contractual services. During the interview stage of the RLI, the Authority may request additional assurances from shortlisted vendors. Any additional assurances or information provided by a vendor during the interview process shall constitute a part of their offer to the Authority. Interviews may be continued at the discretion of the Authority. Any and all assurances, representations and proposals made by respondent vendors will remain a valid offer to the Authority for 120 days after interviews are conducted, regardless of whether the Authority ranks another vendor higher. The Authority shall rank the vendors based upon the terms and conditions of the offer contained in the Letter of Interest, their interview and any additional assurances given after such Letter of Interest is received. Then,

based on the ranking, the Manager, in consultation with the Airport Legal Counsel, shall commence negotiations with the highest ranked respondent. If the Manager and the highest-ranked respondent cannot agree on acceptable terms and conditions within thirty (30) days, then the Manager shall cease negotiations with that respondent and shall commence negotiations with the next-highest-ranked respondent. After negotiations are concluded, the Manager may recommend the negotiated contract to the Authority for approval. The Authority may award the negotiated contract to the responsible and responsive offeror, or if the Authority determines that the negotiated contract recommended for approval is not in the best interest of the Airport, then it may direct the Manager to recommence negotiations, or it may cancel the solicitation.

(4) 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.

(5) 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.

Section 5. Authority's Right to Reject All Bids

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

Section 6. Emergency Procurement

If the Manager determines in writing that an immediate danger to the public health, safety, or welfare or other substantial loss to the Airport requires emergency action, then the Manager 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. However, such emergency procurement shall be made by obtaining pricing information from at least two prospective vendors, which must be retained in the contract file, unless the Manager determines in writing that the time required to obtain pricing information will increase the immediate danger to the public health, safety, or welfare or other substantial loss to the Airport. The Manager shall furnish copies of all written determinations certified under oath and any other documents relating to the emergency procurement action to the Authority.

Section 7. Single Source Procurement

Commodities or contractual services available only from a single source may be excepted from competitive solicitation requirements. When the Manager or Authority believes that commodities or contractual services are available only from a single source, the Manager 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 Manager, after reviewing any information received from prospective vendors, that the commodities or contractual services are available only from a single source, the Manager or Authority shall enter into negotiations with the single source vendor or contractor to obtain the best price for the Airport.

Section 8. 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 Manager as provided in Section 10.

Section 9. 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 10. Manager 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 Manager. Any basis or ground for a protest not set forth in the letter of protest required under this section shall be deemed waived. The Manager shall have the authority to settle and resolve the protest if such a settlement or resolution is practicable in the Manager's opinion. If the protest is not resolved by mutual agreement, the Manager 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 11. 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 Manager, 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 Manager, 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 Manager 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 Manager 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 12. Administrative Appeal of Decisions by the Manager.

(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. Intervenors 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 Manager'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 to be determined by Airport Legal Counsel based on the complexity of the legal and factual issues involved in the appeal, but in no event less than \$25,000. 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's 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 13. 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 14. Appeals

An appeal of the manager'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 15. 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 Manager or any of Manager'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 Authority.

(3) Any person or entity that communicates with the Authority or any of its members, or the Manager or any of Manager'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.