



# **BOCA RATON AIRPORT AUTHORITY 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**

## **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) "Board" means the Board of Members of the Boca Raton Airport Authority.

(7) "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.

(8) "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.

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

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

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

(12) "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.

(13) "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 150/5100-14D dated September 30, 2005, as it may amended or superseded from time to time.

(14) "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.

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

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

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

(18) "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.

(19) "Manager" means the Airport Manager, or his or her designee by written designation, provided that the designee must be an employee of the Airport.

(20) "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.

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

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

(23) "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.

(24) "Professional Services" means any legal, accounting, engineering, architectural, insurance brokerage or consulting services, and includes Design Professional Services.

(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.

(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 three-person committee composed of (1) the Chair of the standing committee responsible for the particular capital project (if no capital project is involved, the most senior member of the Board), (2) the Manager, and (3) a third member to be appointed by resolution of the Board, unless the Authority is procuring Design Professional Services. If the Authority is procuring Design Professional Services, then the Authority shall retain a Design Professional in the same field as the Design Professional Services being sought by the Authority to be the third member of the QEC. The procurement of the Design Professional sought to be the third member of the QEC is exempt from this Procurement Code.

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

(29) "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 vendors are then interviewed and ranked by the PC or Board. 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.

(30) "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.

(31) "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, and 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 Manager, 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 Manager 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.

(32) "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.

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

## **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.**

(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. 150/5100-14D.

(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 or other legal counsel through the use of a Request for Qualifications.

(4) The Authority may procure Professional Services, other than Design Professional Services or legal counsel services, through the use of a Request for Qualifications, provided that the Authority shall authorize the use of an RFQ by resolution in advance.

**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 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) The requirements of Section 4(1) are applicable to all contracts except those procured in accordance with requirements of federal or state law, or other provisions of this Procurement Code.

(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 Manager to determine which bidder will provide the best price to the Airport. 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 may be evaluated on the basis of best price or best value. 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. 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 a PC, the Board may elect to re-evaluate the responses when the recommendation of the PC is brought before the Board 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 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 Manager 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 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 PC or Board 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 PC or Board 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 Board for approval. 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 Manager to recommence negotiations, or it may cancel the solicitation.

(4) The Airport Manager 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.

(5) 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.

(6) 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, proposals or replies 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 Authority 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 Authority. The Manager shall furnish copies of all written determinations certified under oath and any other documents relating to the emergency procurement action to the Board.

### **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 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 shall enter into negotiations with the single source vendor or contractor to obtain the best price for the Airport. The Manager 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 response to the Piggybacked Solicitation must have been due within the previous eight (8) months, unless the Piggybacked Solicitation was issued by the Florida Department of Transportation or Federal Aviation Administration to procure goods or services for airports and the Piggybacked Contract term is still applicable.
- (2) The Piggybacked Solicitation must have included:
  - 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 at the Airport.
- (3) There must have been at least two (2) responses to the Piggybacked Solicitation.
- (4) The vendor with which the Authority wishes to contract through piggybacking must provide the Airport Manager with an exact copy of its response to the Piggybacked Solicitation.

- (5) The terms and conditions of the contract entered into by the Authority must be substantially identical 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.
- (6) 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 Manager 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. 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 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 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 13. 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 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 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 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 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 Board.

(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.

## **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 Manager 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 Manager 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 Manager 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.