

PROCUREMENT AND CONTRACTING ORDINANCE



DETROIT METRO • WILLOW RUN
WAYNE COUNTY AIRPORT AUTHORITY

Effective September 18, 2014

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ARTICLE I – INTRODUCTORY ITEMS

SECTION 1: CITATION AND AUTHORITY

This Ordinance may be cited as the “Wayne County Airport Authority Procurement and Contracting Ordinance” or the “Procurement Ordinance.” The Board adopts this Ordinance under MCL 259.113(5), which provides that the “[B]oard may act only by resolution or ordinance,” and MCL 259.114(6), which requires the Board to establish policies and procedures relating to procurement and contracting.

SECTION 2: SUPERSEDER

This Ordinance entirely supersedes the Wayne County Airport Authority Procurement and Contracting Ordinance adopted on September 13, 2002, as amended on March 5, 2003, June 2, 2004, and September 23, 2008.

SECTION 3: DEFINITIONS

Capitalized terms used and not otherwise defined in this Ordinance shall have the meanings set forth in *Exhibit A* attached hereto.

SECTION 4: SCOPE; VOUCHER POLICY

This Ordinance is intended to apply to all matters provided for herein, with the exception of the items identified and provided for in the Wayne County Airport Authority Voucher Policy, established pursuant to this Ordinance and attached hereto as *Exhibit B*.

SECTION 5: RESPONSIBILITY FOR ENSURING COMPLIANCE

The CEO is responsible for ensuring compliance with this Ordinance, which responsibility may be delegated to the CFO, the Procurement Administrator, or some combination thereof.

SECTION 6: SUPPLEMENTAL PROCEDURES

The Procurement Administrator, with the approval of the Chief Executive Officer, shall, as necessary and appropriate, adopt supplemental contracting and purchasing procedures that are within the oversight provided by, facilitate compliance with, and do not conflict with, this Ordinance.

SECTION 7: WRITINGS MAY BE ELECTRONIC

Where this Ordinance requires an item to be “in writing,” the word “writing” may be construed to include the electronic transmission of information.

ARTICLE II – PRE-PROCUREMENT ITEMS

SECTION 1: RULES OF GENERAL APPLICABILITY

- A. **Delegation of Initiation Authority.** The CEO may delegate the authority to initiate the procurement process to any employee of the Airport Authority.
- B. **Limitation on Duration of Leases and Installment Purchases.** The Airport Authority shall not enter into any lease or installment purchase for a period exceeding the anticipated useful life of that which the Airport Authority acquires through such lease or installment purchase.
- C. **Electronic Submission Required.** Businesses shall submit all Bids, Proposals, and Responses, and all supporting documentation required by the Airport Authority, as word-searchable PDF files that permit their contents to be saved, viewed, printed and retransmitted by electronic means. The Procurement Administrator may waive the requirement that a PDF submission, or portion of a submission, be word-searchable. If a submitted PDF file is a reproduction of a paper document, the file must maintain the graphical and textual integrity of the

original document. Such PDF files shall be considered “original” submissions for all purposes related to this Ordinance. This provision shall not be read so as to preclude the Airport Authority from requiring or requesting, or a Business from submitting, in addition to its electronic original submission, a paper copy of any file submitted electronically. Notwithstanding the above, and only if the Procurement Administrator determines that a component item of a submission is not capable of being submitted in electronic format, the Airport Authority may elect to receive that item in non-electronic format.

D. Electronic Signatures Accepted. Properly authenticated electronic signatures shall be treated the same as if the signee had put pen to paper, so long as such treatment is in accordance with the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 96, and Michigan Uniform Electronic Transactions Act, Act 305 of 2000, where each is applicable, as each may be amended from time to time, and any successor statutes thereto.

E. Prohibition on Chaining. No Airport Authority employee shall engage in the following:

(1) Initiating, processing, approving, or executing multiple procurements that are under the applicable Competitive Solicitation dollar threshold for substantially the same Goods or Services, if the effect of the activity would be to, purposefully or not, circumvent any Competitive Solicitation requirement.

(2) Initiating, processing, approving, or executing multiple contracts with the same contractor to acquire or perform the same or substantially similar Goods or Services, if the effect of the activity would be to, purposefully or not, circumvent the contract execution authority limits set forth under the

section entitled "EXECUTION OF CONTRACTS."

F. Ineligibility of Businesses in Arrears to, or Default with, the Airport Authority, Debarred, or in Violation of the Airport Authority's Ethics Ordinance.

The Airport Authority shall not enter into any contract, other than a settlement of a legal claim or a dispute, with any of the following:

- (1) A Business, excluding a Public Agency, that is in arrears in excess of 30 days to, or has received a notice of default from, the Airport Authority under any contract, debt, or other obligation;
- (2) A Business that is debarred by the Airport Authority from consideration for a contract award; or
- (3) A Business that, to the knowledge of the Procurement Administrator, within the past 2 years, committed or participated in a violation of the Airport Authority's Ethics Ordinance. This item may be waived by a majority vote of a quorum of the Airport Authority's Ethics Committee.

Notwithstanding the above, the Airport Authority's Controller (or, if the Airport Authority has no employee with the title of Controller, such other Airport Authority employee with duties equivalent to those of a controller) may determine that an arrearage is immaterial and waive the arrearage for purposes relating to this subsection, with such declaration revocable at the Controller's discretion.

G. Contract Award Recommendation for Multiple Businesses. Where an RFB, RFP, RFQ, or SFQ process includes the expectation of a contract award recommendation to a Business, the Procurement Administrator and the Business Unit requesting the contract may make a contract award recommendation for more than one Business.

H. **Special Construction Contract Considerations.**

(1) **Performance and Payment Bonds.** For all Construction contracts in excess of \$50,000, performance and payment bonds in an amount equal to 100% of the contract amount are required, which bonds are conditioned upon the faithful performance of the contract in accordance with the plans, specifications, and terms thereof, and the payment of all laborers performing work on the applicable project. The surety issuing the performance and payment bonds must be authorized to conduct business in the State.

(2) **Retainage.** The Airport Authority shall retain a portion of each payment by the Airport Authority to a Construction contractor for work in place under the Construction contract, when required to by the Michigan Public Agency Construction Contracts Act, MCL 125.1561, *et seq.*, MSA 5.2949(101), *et seq.*, or any successor statute or regulation thereto. This provision shall not be read so as to preclude the Airport Authority from withholding a retainage amount on a Construction contract not called for by the same statute.

SECTION 2: COMPLIANCE WITH FEDERAL REQUIREMENTS

A. **General.** The Airport Authority shall at all times comply with all applicable federal contracting requirements for contracts that are financed, in whole or in part, with federal funds. Specifically, the Airport Authority must maintain compliance with all aspects of 49 C.F.R. Part 18.36 – “Procurement,” the “Drug-Free Workplace” requirements of 49 C.F.R. Part 29, and any successor regulations thereto.

B. **Disadvantaged Business Enterprise; Airport Concessions Disadvantaged Business Enterprise.** The Airport Authority shall comply with all applicable

federal contracting requirements pertaining to Disadvantaged Business Enterprises, Airport Concessions Disadvantaged Business Enterprises, and any other targeted businesses, and shall seek to ensure maximum participation of those and other targeted business enterprises in contracting opportunities with the Airport Authority, to the extent permitted by federal and State law. This includes, but is not limited to, the following:

- (1) **49 C.F.R. Part 23** – “Participation by Disadvantaged Business Enterprise in Airport Concessions”
- (2) **49 C.F.R. Part 26** – “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”

C. Construction, Goods, and A/E Professional Services Contracts. The Airport Authority shall comply with all applicable federal contracting requirements for Construction, Goods, and A/E Professional Services contracts that are financed, in whole or in part, with federal funds. This includes, but is not limited to, the following:

- (1) **All Contracts**
 - (a) **49 C.F.R. Part 18.36** – “Procurement”
 - (b) **49 U.S.C. 501** – “Buy American Preferences” (Construction and Goods only)
 - (c) **49 C.F.R. Part 21** – “Civil Rights Act of 1964, Title VI - Contractor Contractual Requirements”
 - (d) **49 U.S.C. 47123** – “Airport and Airway Improvement Act of 1982, Section 520”

- (e) 49 C.F.R. Part 20 – “Lobbying and Influencing Federal Employees”
- (f) 49 C.F.R. Part 30 – “Trade Restriction Clause”
- (g) 49 U.S.C. 47112 – “Veterans Preference” (Construction Only)
- (h) Advisory Circular 150/5100-14 – “Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects” (A/E Professional Services only)

(2) **Contracts Exceeding \$2,000**

- (a) 29 C.F.R. Part 5 – “Davis Bacon Labor Provisions” (Construction only)

(3) **Contracts Exceeding \$10,000**

- (a) 41 C.F.R. Part 60-1.4 – “Equal Opportunity Clause” (Construction only)
- (b) 41 C.F.R. Part 60-1.8 – “Certification of Non-Segregated Facilities” (Construction only)
- (c) 41 C.F.R. Part 60-4.2 – “Notice of Requirement for Affirmative Action” (Construction only)
- (d) 41 C.F.R. Part 60-4.3 – “Equal Employment Opportunity Specification” (Construction only)

(4) **Contracts Exceeding \$25,000**

- (a) 2 C.F.R. Parts 180 and 1200 – “Certification Regarding Debarment and Suspension (Non-Procurement)”

(5) **Contracts Exceeding \$100,000**

- (a) 29 C.F.R. Part 5 – “Contract Workhours and Safety Standards Act Requirements” (Construction only)

- D. **Ongoing Compliance with Changing Federal Requirements.** The federal requirements contained in the statutes, regulations, and guidance listed above, and in other sources, may be amended, suspended, revised, or supplemented, or otherwise change from time-to-time. The Procurement Administrator hereby is charged with ensuring that the Airport Authority maintains compliance with all applicable federal procurement and contracting requirements.

ARTICLE III – DETERMINATION OF SOLICITATION METHOD

SECTION 1: COMPETITIVE SOLICITATION REQUIRED

- A. **Competitive Solicitation Generally Required.** Except as otherwise provided in this Ordinance, any contract that may provide for the Airport Authority to pay or receive in excess of \$25,000, shall be let through a Competitive Solicitation process.
- B. **Exceptions for Certain Non-Federally Funded Contracts.** Because Competitive Solicitation of certain contracts does not efficiently and effectively meet the Airport Authority's needs, Competitive Solicitation is not required, but may be used, for the following types of contracts for which federal funds will not be used:
- (1) **Small Dollar Procurements.** Competitive Solicitation is not required for contracts under which the Airport Authority will pay or receive \$25,000 or less.
 - (2) **Emergency Procurements.** Competitive Solicitation is not required for a contract if the CEO determines in writing that the contract qualifies as an

Emergency Procurement and details in writing the reason(s) for such determination.

- (3) **Intergovernmental Agreements.** Competitive Solicitation is not required for contracts to which all parties are Public Agencies.
- (4) **Collective Bargaining Agreements.** Competitive Solicitation is not required for a Collective Bargaining Agreement.
- (5) **Negotiated Construction Contracts.** Competitive Solicitation is not required for a Construction contract so long as the contract value does not exceed \$50,000.
- (6) **Single Source Procurements.** Competitive Solicitation is not required for a Single Source Procurement. In order to procure anything under this section, the Procurement Administrator shall perform proper due diligence, including an Internet search, and certify in writing that the Good or Service being procured is only available from a single source. The Airport Authority shall maintain such certification in the procurement file so long as the procurement file is maintained.
- (7) **Certain Concession Contracts.** Competitive Solicitation is not required for a Concession contract if the Concession contract has been the subject of at least two (2) prior RFBs or RFPs and the Airport Authority did not receive any Responsive Bids or Proposals, as the case may be, from Responsible Bidders or Proposers.
- (8) **Cooperative Purchase Arrangement.** The Airport Authority may contract for Goods or Services without Competitive Solicitation through a Cooperative Purchase Arrangement with another Public Agency or with an entity whose primary business is to competitively solicit goods or

services, or both, on behalf of Public Agencies – and for which the Airport Authority is eligible for participation – so long as the other Public Agency or entity, whether acting alone or together with other entities, obtained pricing through Competitive Solicitation.

- (9) **Legal Claims or Disputes.** Competitive Solicitation is not required for settlement or resolution of any actual or anticipated legal claim or dispute by or against the Airport Authority, including any mediation, arbitration, or facilitation award.
- (10) **Leases, Sales, or Purchases of Real Property.** The Airport Authority may enter into leases or sales of Real Property without Competitive Solicitation, provided that (a) any sale of Real Property by the Airport Authority must be priced (i) based upon the appraised value of the property, (ii) by auction, or (iii) by sealed bids, and (b) any purchase of Real Property by the Airport Authority must be priced (i) based upon the appraised value of the property or (ii) in accordance with applicable laws governing condemnation.
- (11) **Licenses or Permits.** Competitive Solicitation is not required for the granting of any License or Permit, as defined in Section 2.41 of the Airport Authority's Airport Ordinance.
- (12) **Certain Professional and Other Consulting Services.** Competitive Solicitation is not required for Legal Services contracts, A/E Professional Services contracts, information technology security Services contracts and other professional or consulting Services contracts under which the Airport Authority will pay \$50,000 or less.

(13) **Special Exceptions Under MCL 259.114(6)(c)**. Competitive Solicitation is not required for any contract if the CEO determines and details in writing why at least one or more of the following apply to such contract:

- (a) Competitive Solicitation is not appropriate;
- (b) Competitive Solicitation is not practicable under the circumstances to efficiently and effectively meet the Airport Authority's needs; or
- (c) Procurement without Competitive Solicitation is in the public's best interest.

C. Competitive Solicitation and Federally Funded Contracts. When federal funds are to be, or may be utilized, to pay for a contract, the Airport Authority shall follow the Competitive Solicitation requirements set forth in Title 49 C.F.R. Part 18.36 and any successor statute(s) or regulation(s) thereto. Nonetheless, the Competitive Solicitation requirements set forth in this Ordinance shall be treated as supplemental to Title 49 C.F.R. Part 18.36 and shall apply in full except to the extent of any conflict with Title 49 C.F.R. Part 18.36.

SECTION 2: SELECTION OF SOLICITATION METHOD WHERE COMPETITIVE SOLICITATION REQUIRED

A. General. Where Competitive Solicitation is required, the Procurement Administrator shall determine the appropriate Competitive Solicitation method with input from the requesting Business Unit. In making this determination, the Procurement Administrator may not select a Competitive Solicitation method that is not explicitly authorized by Subsections B through E below.

B. RFB. An RFB may be used for Competitive Solicitation of any contract for Construction, Concessions, Goods, or Services, subject to the following: (1) an RFB may not be used for contracts for A/E Professional Services that are paid for

in whole or in part with federal funds, and (2) an RFB may not be used for contracts for Legal Services.

- C. RFP.** An RFP may be used for Competitive Solicitation of any contract for Construction, Concessions, Goods, or Services, subject to the following: (1) an RFP may not be used for contracts for A/E Professional Services that are paid for in whole or in part with federal funds, and (2) an RFP may not be used for a contract for Construction unless the use of an RFP has been approved in writing by the CEO in consultation with the Chairperson or Vice-Chairperson.
- D. RFQ.** An RFQ must be used for Competitive Solicitation of any contract for A/E Professional Services that is paid for in whole or in part with federal funds, and may be used for: (1) contracts for A/E Professional Services that are not paid for whole or in part with federal funds, (2) contracts for Legal Services, (3) contracts for other professional and consulting services, and (4) pre-qualification of Businesses prior to the issuance of an RFB or RFP, so long as pre-qualification would be beneficial to the Airport Authority and no contract would be awarded pursuant to the RFQ.
- E. SFQ.** An SFQ may be used for Competitive Solicitation of the following: (1) contracts for Construction, Goods, or Services, the total costs of which will not exceed \$100,000, and (2) contracts for Construction, Goods, or Services in excess of \$100,000, if the solicitation of the Construction, Goods, or Services has already been the subject of an RFB and (a) the Airport Authority did not receive any Bids in response to the RFB, and (b) the Procurement Administrator determines in writing that reissuing the RFB, either as issued or as revised, likely would not result in the receipt of Bids. For sake of clarification, an SFQ may not be used for Competitive Solicitation of a Concessions contract.

ARTICLE IV – THE COMPETITIVE SOLICITATION PROCESS

SECTION 1: SPECIAL COMPETITIVE SOLICITATION CONSIDERATIONS

- A. Addendum (RFB, RFP, or RFQ).** The Procurement Administrator may issue an Addendum to an RFB, RFP, or RFQ in order to (1) answer questions regarding, clarify, correct, or modify the RFB, RFP or RFQ, or (2) extend the Deadline for the RFB, RFP or RFQ. An Addendum must be in writing, and the Procurement Administrator shall send it to all Businesses that have obtained the RFB, RFP or RFQ to which it applies.
- B. Bid or Proposal Guarantee (RFB or RFP).** The Procurement Administrator may require submission of a Bid Guarantee or Proposal Guarantee as part of an RFB or RFP, if they determine it to be in the Airport Authority's best interests.
- C. Cancellation of Competitive Solicitations; Rejection of Replies (RFB, RFP, RFQ, or SFQ).** Notwithstanding any provision in this Ordinance to the contrary, the CEO or the Procurement Administrator, if they determine it to be in the best interests of the Airport Authority, may (1) cancel an RFB, RFP, RFQ, or SFQ in whole or in part, or (2) reject any or all Bids, Proposals, Responses, or Quotes in whole or in part. The individual making the determination shall create a written record setting forth the reasons for the determination and the Airport Authority shall maintain that written record in the procurement file so long as the procurement file is maintained.

In the event of a cancellation of a Competitive Solicitation, the Procurement Administrator or their designee shall send written notice of cancellation to all Businesses that have replied to the cancelled RFB, RFP or RFQ, and may disseminate a general notice of cancellation through the Michigan

Inter-governmental Trade Network, the Airport Authority's website, or otherwise. In the event of a rejection of a Competitive Solicitation, the Procurement Administrator or their designee shall send written notice of rejection to the affected Business. In either case, any Bid or Proposal Guarantees received by the Airport Authority in connection with the cancelled RFB or RFP or rejected Bid or Proposal shall be returned to the appropriate Bidder or Proposer as soon as is reasonably possible.

- D. No Bids, Proposals, Responses, or Quotes (RFB, RFP, RFQ, or SFQ).** In the event that the Airport Authority receives no replies to a Competitive Solicitation, the Procurement Administrator – in consultation with the requesting Airport Authority Business Unit – shall choose whether to (1) reissue the same Competitive Solicitation document, (2) issue a revised Competitive Solicitation document, or (3) to cancel the procurement entirely. If the Procurement Administrator chooses to cancel the procurement entirely, they shall create a written record setting forth the reasons for the determination and maintain that written record in the procurement file so long as the procurement file is maintained.
- E. Single Response Procurement (RFB, RFP, RFQ, or SFQ).** In the event that the Airport Authority receives only one Bid, Proposal, Response, or Quote in response to an RFB, RFP, RFQ, or SFQ, the Procurement Administrator may recommend a contract award so long as (1) the Bid, Proposal, Response, or Quote is Responsive, (2) the Bidder, Proposer, or Respondent is Responsible and (3) such Responsive and Responsible determinations are made in accordance with Sections 2 through 4 below.

- F. Notice Requirement (RFB, RFP, or RFQ).** The Procurement Administrator shall arrange for notice of each RFB, RFP, and RFQ at least 10 calendar days before its Deadline by each of the following means: (1) advertisement on the Michigan Intergovernmental Trade Network, or if it no longer exists or is utilized, any successor thereto; (2) sending notice of the RFB, RFP, or RFQ to (a) the incumbent contractor for the same or substantially similar procurement, if any, (b) any Business(es) that previously responded to the most recent Competitive Solicitation for the same or a substantially similar procurement, and (c) any Business(es) so requested by the Business Unit from which the procurement originated; (3) if reasonably requested by the Business Unit from which the procurement originated, advertisement in appropriate trade journals and other publications; and (4) any other method the Procurement Administrator deems appropriate and in the best interests of the Airport Authority.
- G. Small Business Enterprise Program (RFB, RFP, RFQ, or SFQ).** In the course of the solicitation and evaluation process for Bids, Proposals, Responses and Quotes, the Procurement Administrator or their designee shall apply equalization credits and shall have the authority to designate contracts as Certified SBE Development Contracts as set forth in *Exhibit C* attached to this Ordinance.

SECTION 2: RFB PROCESS

- A. RFB Contents.** An RFB must conform to (1) the standards for requests for bids set forth in the National Institute of Governmental Purchasing's "Principles and Practices of Public Procurement," or any successor publication thereto, and (2) any federal or State requirements, and may include any other information the Procurement Administrator deems beneficial to include in the RFB to ensure fair competition among all prospective Bidders.

B. RFB Evaluation Process.

- (1) **Public Opening.** The Procurement Administrator, or their designee, shall publicly open all Bids that are submitted by the Deadline at the time and place specified in the RFB, and shall rank, in writing on a Bid Sheet, the price or fee, as the case may be, of each Bid, in order of lowest to highest.
- (2) **Replace “Lowest” with “Highest” for Revenue Contracts.** Where an RFB is issued for a contract for which the Airport Authority will receive revenue from a Business, instead of paying for a Good or Service, the word “lowest” shall be replaced with the word “highest,” and vice versa, in all instances where either word appears in this Section.
- (3) **Bid Evaluation.** The Procurement Administrator, or their designee, shall evaluate each Bid one at a time beginning with the lowest Bid to determine first if such Bid is a Responsive Bid and if the Bidder is a Responsible Bidder, as set forth below. If the Procurement Administrator, or their designee, determines that the lowest Bid is a Responsive Bid and is submitted by a Responsible Bidder, then none of the other Bids shall be considered any further. If the Procurement Administrator, or their designee, determines that the lowest Bid either is not a Responsive Bid or is not submitted by a Responsible Bidder, then and only then, shall the Procurement Administrator, or their designee, disqualify the lowest Bid and consider the next lowest Bid. This process shall continue until the Responsible Bidder with the lowest Responsive Bid is selected, or until all Bidders have been disqualified.

(a) Determination of Responsive Bid. The Procurement Administrator, or their designee, shall review each Bid to determine if it conforms, or does not conform, to all material requirements of the RFB. In determining whether a Bid is Responsive, the Procurement Administrator or their designee shall not utilize any information (i) that was not contained in the Bid at the Deadline or (ii) of which the Procurement Administrator, their designee, the individual that originated the relevant Requisition(s), or such individual's supervisor had affirmative personal knowledge as of the Deadline. Such determination of Responsiveness shall include the General Counsel or their designee's disposition of any exceptions or other revisions to the legal terms of the RFB proposed by the Bidder in its Bid.

1. If the Procurement Administrator, or their designee, determines that the Bid conforms to the RFB's requirements, they shall deem the Bid Responsive.
2. If the Procurement Administrator, or their designee, determines that the Bid does not conform to the RFB's requirements, they shall deem the Bid non-Responsive and disqualify the Bid.
3. If the Procurement Administrator, or their designee, cannot make a clear determination as to whether the Bid is Responsive, then they shall consult the head of the Business Unit that originated the relevant Requisition, and shall determine whether the Bid is Responsive. In

consulting the head of the originating Business Unit, the Procurement Administrator, or their designee, shall make all reasonable efforts to conceal the identity, and any identifying information, of the Bidder from the individual(s) being consulted.

(b) Determination of Responsible Bidder. If a Bid is determined to be a Responsive Bid and only if so, then the Procurement Administrator, or their designee, shall evaluate the Bid to determine if the Bidder is Responsible.

1. If they determine that the Bidder is Responsible, they shall deem the Bidder Responsible.
2. If they determine that the Bidder is not Responsible, they shall deem the Bidder non-Responsible and disqualify the Bid.
3. If they cannot make a clear determination as to whether the Bidder is Responsible, then they shall consult the individual that originated the relevant Requisition(s), or such individual's supervisor, and shall determine whether the Bidder is Responsible. In consulting the originating individual or their superior, the Procurement Administrator, or their designee, shall make all reasonable efforts to conceal the identity, and any identifying information, of the Bidder from the individual being consulted.

A Bidder shall be deemed non-Responsible if any of the following conditions exist with respect to that Bidder:

1. The Bidder does not meet each and every minimum qualification and other requirement set forth in the RFB;
2. The Bidder is ineligible to contract with the Airport Authority under the subsection of this Ordinance entitled “Ineligibility of Businesses in Arrears to or Default with the Airport Authority, Debarred, or in Violation of the Airport Authority’s Ethics Ordinance.”

C. Contract Award Recommendation. The Procurement Administrator, or their designee, shall determine which Bid, if any, is (1) lowest and (2) a Responsive Bid where the Bidder is Responsible. The Procurement Administrator, or their designee, shall notify the CEO in writing of such determination, and shall request the CEO’s approval of a contract award recommendation for that Bidder, provided that the Procurement Administrator has not decided to reject all Bids. Additionally, once the aforementioned determination has been made: (1) the Procurement Administrator or their designee may, but need not, provide a document to the recommended Bidder, which indicates the Airport Authority’s non-binding intent to recommend the Bidder to the CEO for approval, and (2) the General Counsel or their designee may commence efforts to obtain a final contract that is executed by the recommended Bidder, but not the Airport Authority.

D. Resolution of Contract Award Recommendation.

- (1) **CEO Approval.** As soon as practicable after the CEO approves the contract award recommendation, the Procurement Administrator, or their designee, shall notify, in writing, all Bidders regarding the CEO’s approval of a contract award recommendation for the recommended Bidder. The

Procurement Administrator, or their designee, shall also notify, in writing, the head of the requesting Business Unit of the same.

- (2) **CEO Rejection.** If the CEO rejects the contract award recommendation or otherwise does not affirmatively approve it, then the CEO may, in consultation with the head of the requesting Business Unit and the Procurement Administrator, (a) approve the contract award recommendation, (b) determine that a contract award recommendation for another Responsive Bid from a Responsible Bidder shall be made on the grounds of it being the best value to the Airport Authority, or (c) determine that a new RFB shall be issued. If the CEO does not approve the contract award recommendation, the CEO shall detail in writing their determination and the reasons explaining why the determination was made. Further, notwithstanding any other provision of this Ordinance, if the CEO exercises option (b) above, the contract must be approved by the Board, regardless of the contract's value.

If the CEO chooses to recommend a contract award to another Responsible Bidder with a Responsive Bid, the Procurement Administrator, or their designee, shall notify as soon as practicable, and in writing, all Bidders regarding the CEO's approval of the contract award recommendation to the recommended Bidder. The Procurement Administrator, or their designee, shall also notify, in writing, the head of the requesting Business Unit of the same.

SECTION 3: RFP AND RFQ PROCESS

- A. **RFP or RFQ Contents.** An RFP or RFQ must conform to the standards for requests for proposals or requests for qualifications set forth in (1) the National

Institute of Governmental Purchasing's "Principles and Practices of Public Procurement," or any successor publication thereto, and (2) any federal or State requirements, and may include any other information the Procurement Administrator deems beneficial to include in the RFP or RFQ to ensure fair competition among all prospective Proposers or Respondents.

- B. Separate Pricing Requirement Allowed.** The Procurement Administrator may specify in an RFP or RFQ that all pricing information shall be provided by each Proposer or Respondent in a distinct .PDF file, and no other place in its Proposal or Response. This separate pricing information shall not be provided to the Evaluation Committee (1) until the Evaluation Committee has evaluated each Proposal or Response based on the non-price evaluation criteria set forth in the RFP or RFQ or (2) unless the Procurement Administrator, or their designee, is unable to make a determination of a Proposal or Response's Responsiveness, and the pricing information is necessary to make the determination.
- C. Appointment of Evaluation Committee.** The Procurement Administrator shall arrange for the appointment of an Evaluation Committee comprised of at least three individuals from at least three (3) different Business Units, at least one of which shall be from the Business Unit which originated the relevant Requisition(s). The CEO may waive the multiple Business Unit requirement set forth above for certain procurements, so long as (1) it is detailed in writing why the requirement was waived and (2) the CEO personally, and without delegation to any other Airport Authority officer as otherwise permitted under this Ordinance, executes any contract resulting from a procurement for which the requirement was waived.

D. RFP or RFQ Evaluation Process.

(1) **Determination of Responsive Proposals or Responses.** Prior to the first meeting of the Evaluation Committee, the Procurement Administrator, or their designee, shall review each Proposal or Response to determine if it conforms, or does not conform, to all material requirements of the RFP or RFQ. Such determination of Responsiveness shall include the General Counsel or their designee's disposition of any exceptions or other revisions to the legal terms of the RFP or RFQ proposed by the Proposer or Respondent in its Proposal or Response.

(a) If the Procurement Administrator, or their designee, determines that a Proposal or Response conforms to the RFP or RFQ's requirements, they shall deem the Proposal or Response Responsive.

(b) If the Procurement Administrator, or their designee, determines that a Proposal or Response does not conform to the RFP or RFQ's requirements, they shall deem the Proposal or Response non-Responsive and disqualify the Proposal or Response.

(c) If the Procurement Administrator, or their designee, cannot make a determination as to whether a particular Proposal or Response is Responsive, then the Evaluation Committee shall, at its first meeting – prior to any evaluation of any Proposals or Responses and by a majority vote – make such a determination.

In determining whether a Proposal or Response is Responsive, the Procurement Administrator, their designee, or the Evaluation Committee, as applicable, shall not utilize any information that (i) was not contained in

the Proposal or Response at the Deadline or (ii) of which the Procurement Administrator, their designee, or an Evaluation Committee did not have affirmative personal knowledge as of the Deadline.

(2) **Determination of Responsible Proposers or Respondents.** Prior to the first meeting of the Evaluation Committee, the Procurement Administrator, or their designee, shall evaluate the Proposal or Response to determine if the Proposer or Respondent is Responsible.

(a) If the Procurement Administrator, or their designee, determines that the Proposer or Respondent is Responsible, they shall deem the Proposer or Respondent Responsible.

(b) If the Procurement Administrator, or their designee, determines that the Proposer or Respondent is not Responsible, they shall deem the Proposer or Respondent non-Responsible and disqualify the Bid.

(c) If the Procurement Administrator, or their designee, cannot make a clear determination as to whether the Proposer or Respondent is Responsible, then the Evaluation Committee shall, at its first meeting – prior to any evaluation of any Proposals or Responses and by a majority vote – make such a determination.

A Proposer or Respondent shall be deemed non-Responsible if any of the following conditions exist with respect to that Proposer or Respondent:

(a) The Proposer or Respondent does not meet each and every minimum qualification and other requirement set forth in the RFP or RFQ;

- (b) The Proposer or Respondent is ineligible to contract with the Airport Authority under the subsection of this Ordinance entitled “Ineligibility of Businesses in Arrears to or Default with the Airport Authority, Debarred, or in Violation of the Airport Authority’s Ethics Ordinance.”
- (3) **Evaluation Based on Evaluation Criteria.** After disqualifying all Proposals or Responses that are either non-Responsive or for which the Proposer or Respondent is non-Responsible, the Evaluation Committee shall evaluate all remaining Proposals or Responses based upon the evaluation criteria set forth in the RFP or RFQ. In performing the evaluation:
 - (a) Prior to commencing any discussion of the Proposals or Responses for the purpose of evaluation, the Evaluation Committee shall assign a weight to each evaluation criterion.
 - (b) Prior to the final evaluation of any Proposal or Response, the Evaluation Committee, at its discretion, may (1) conduct oral interviews with or (2) request written responses to questions from some or all of the Proposers or Respondents. In the event of a conflict between a Proposer or Respondent’s answer in an oral interview or to a written question and its Proposal or Response, and to the extent to which the conflict exists, the Evaluation Committee shall only consider the Proposal or Response.
 - (c) Each member of the Evaluation Committee’s ratings for each Proposal or Response shall be recorded on a separate evaluation form, provided by the Procurement Administrator or their

designee, which ratings shall be based on the evaluation criteria contained in the RFP or RFQ and the weights assigned to those criteria.

Once the Evaluation Committee has scored the Proposals or Responses, the Procurement Administrator or their designee shall tally all scores of the Evaluation Committee, identify in writing the total score assigned to each Proposal or Response, and rank them according to such scores. In doing so, they may round numbers, but shall utilize decimals to the extent necessary to ensure that a Proposer or Respondent with a higher overall score is not supplanted by one with a lower overall score by way of rounding.

- E. Contract Award Recommendation.** The Procurement Administrator or their designee shall provide the results of the evaluation process, in writing, to the head of the requesting Business Unit and the General Counsel. The Procurement Administrator, or their designee, shall then notify the CEO in writing of such results, and shall request the CEO's approval of a contract award recommendation for the highest-scoring Proposer or Respondent, provided that the Procurement Administrator has not decided to reject all Proposals and Responses. Additionally, once the highest-scoring Proposer or Respondent has been determined: (1) the Procurement Administrator or their designee may, but need not, provide a document to the recommended Proposer or Respondent, which indicates the Airport Authority's non-binding intent to recommend the Proposer or Respondent to the CEO for approval, and (2) the General Counsel or their designee may, but need not, commence efforts to obtain a final contract

that is executed by the highest-scoring Proposer or Respondent, but not the Airport Authority.

F. Resolution of Contract Award Recommendation.

- (1) **CEO Approval.** As soon as practicable after the CEO approves the contract award recommendation, the Procurement Administrator, or their designee, shall notify, in writing, all Proposers or Respondents regarding the CEO's approval of the winning Proposer or Respondent. The Procurement Administrator, or their designee, shall also notify, in writing, the head of the requesting Business Unit of the same.
- (2) **CEO Rejection.** If the CEO rejects the contract award recommendation or otherwise does not affirmative approve it, then the CEO may, in consultation with the head of the requesting Business Unit and the Procurement Administrator, (a) approve the contract award recommendation, (b) determine that a contract award recommendation for another Proposer or Respondent shall be made on the grounds of it being the best value to the Airport Authority, or (c) determine that a new RFP or RFQ shall be issued. If the CEO does not approve the contract award recommendation, the CEO shall detail in writing their determination and the reasons explaining why the determination was made. Further, notwithstanding any other provision of this Ordinance, if the CEO exercises option (b) above, the contract must be approved by the Board, regardless of the contract's value.

If the CEO chooses a Proposer or Respondent other than the highest-scoring Proposer or Respondent, the Procurement Administrator, or their designee, shall notify as soon as practicable, and in writing, all

Proposers or Respondents regarding the CEO's approval of the winning Proposer or Respondent. The Procurement Administrator, or their designee, shall also notify, in writing, the head of the requesting Business Unit of the same.

SECTION 4: SFQ PROCESS

- A. Minimum Number of Quotes.** When utilizing an SFQ, the Procurement Administrator, or their designee, shall, in writing, solicit written Quotes from at least three (3) Businesses providing the Goods or Services for which Quotes are being sought.
- B. SFQ Contents.** Unless otherwise directed by the Procurement Administrator, such written request for a Quote shall conform to the standards for qualifications-based solicitation set forth in the National Institute of Governmental Purchasing's "Principles and Practices of Public Procurement," or any successor publication thereto, and may include any other information the Procurement Administrator deems beneficial to include in the SFQ to ensure fair competition among all prospective Respondents.
- C. SFQ Evaluation Process; Contract Award Recommendation; Resolution of Contract Award Recommendation**
- (1) **Where Price is the Sole Evaluation Criterion.** The Procurement Administrator or their designee shall recommend award of the contract to the lowest Responsive Quote from a Responsible Business under the process set forth above set forth above in Article IV, Section 2 in the subsections entitled "RFB Evaluation Process," "Contract Award Recommendation," and "Resolution of Contract Award Recommendation," except with respect to public opening of Bids.

- (2) **Where Price is One of Multiple Evaluation Criteria or Is Not Considered.** The Procurement Administrator or their designee shall appoint an Evaluation Committee and shall do one of the following:
- (a) recommend award of the contract to the highest-scoring Responsive Quote from a Responsible Business under the process set forth above in Article IV, Section 3 in the subsections entitled “Appointment of Evaluation Committee,” “RFP or RFQ Evaluation Process,” “Contract Award Recommendation,” and “Resolution of Contract Award Recommendation;” or
 - (b) contact one or more of the Businesses that have submitted a quote, with notification that the Airport Authority intends to negotiate with them and recommend award of the contract to one or more of the Businesses as set forth above, contingent on a successful negotiation.

SECTION 5: PROTESTS

- A. Protests Allowed** – A Protester may file with the Procurement Administrator a protest about any or all of the following:
- (1) Alleged defects in a Competitive Solicitation process;
 - (2) A contract award recommendation reached through a Competitive Solicitation process; or
 - (3) Award of a contract.
- B. Timing of Protest** – In order for a protest to be valid, the Protester shall file the protest prior to award of the contract to which it relates, unless the Protester did not know and could not have known of the facts giving rise to such protest prior

to the contract award. In such cases, the protest must be filed within 3 business days after the award of the contract to which the protest pertains. A Protester shall be deemed to have known of the facts giving rise to its protest prior to the contract award if the Authority sent notice of the contract award recommendation to the Protestor at least 5 business days prior to the award of the contract.

C. Protest Contents – In order for a protest to be valid, it shall be filed in writing and include the following information:

- (1) Name, address, telephone number, and email address of the Protester.
- (2) Description of the Competitive Solicitation to which the protest relates.
- (3) A detailed statement of the legal or factual grounds, or both, for the protest. The protest shall include copies or specific reference to all documents, statutes or other materials the Protester wants the Airport Authority to consider, and the Airport Authority may, but need not, consider any data or material not included with or made specific reference to in the protest.
- (4) A statement of the relief requested by the Protester.

D. Protest Resolution –

- (1) Protest Prior to Contract Award – The Competitive Solicitation or contract award process shall not proceed further until the Procurement Administrator makes a written determination about the merits of the protest, unless the Procurement Administrator, in consultation with the General Counsel, determines in writing that (a) the protest does not provide sufficient information to make a determination on its merits or (2) award of the contract without delay is necessary to protect the Airport Authority's best interests. If the Procurement Administrator determines

that the protest is without merit, the solicitation or contract award process may continue. If the Procurement Administrator determines that the protest is with merit, then the Procurement Administrator shall recommend relief to address the protest to the CEO, and the Procurement Administrator shall provide any relief approved by the CEO. No matter the outcome, the Procurement Administrator shall provide the Protester with the outcome of the protest along with a description of how the Airport Authority reached such outcome.

- (2) Protest After Contract Award – No activity shall take place under the terms of the contract until the Procurement Administrator makes a written determination about the merits of the protest, unless the Procurement Administrator, in consultation with the General Counsel, determines in writing that (a) the protest does not provide sufficient information to make a determination on its merits or (b) operating under the contract without delay is necessary to protect the Airport Authority's best interests. If the Procurement Administrator determines that the protest is without merit, the Airport Authority may utilize the contract as if the protest never existed. If the Procurement Administrator determines that the protest is with merit, then the Procurement Administrator shall recommend relief to address the protest to the CEO, and the Procurement Administrator shall provide any relief approved by the CEO. No matter the outcome, the Procurement Administrator shall provide the Protester with the outcome of the protest along with a description of how the Airport Authority reached such outcome.

ARTICLE V – CONTRACT APPROVAL AND EXECUTION

SECTION 1: APPROVAL OF CONTRACTS

- A. **Board Approval Required.** The Board must approve the following types of contracts for which the Airport Authority will be obligated to pay, or the Airport Authority will receive, in the aggregate in excess of the following amounts:
- (1) **\$250,000** – Emergency Procurements.
 - (2) **\$100,000** – Contracts procured through Competitive Solicitation; Intergovernmental Agreements; leases of Real Property or Personal Property from the Airport Authority or by the Airport Authority; contracts in settlement or resolution of actual or anticipated legal claims or disputes by or against the Airport Authority, including any mediation, arbitration, or facilitation award; Cooperative Purchase Arrangements; Licenses or Permits as defined in Section 2.41 of the Airport Authority’s Airport Ordinance; any contract, lease, obligation, or other instrument not specifically provided for in this Ordinance or another ordinance of the Airport Authority.
 - (3) **\$50,000** – Negotiated Construction Contracts.
 - (4) **\$10,000** – Single Source Procurements or Special Exception Contracts, regardless of type, and Concessions contracts.
 - (5) **\$0 (Always Required)** – Collective Bargaining Agreements; grant agreements in connection with which the Airport Authority might expend in excess of \$100,000 by way of a local match or other obligation; project development agreements; airline use agreements; leases of non-terminal Real Property not meeting the requirements of Subsection 1(B)(2) below;

purchases and sales of Real Property; and acceptance of gifts of Real Property to the Airport Authority.

- B. CEO Approval Permitted.** Except as otherwise provided below, the CEO may approve all contracts for which Board approval is not required under the foregoing Subsection 1(A), including but not limited to contracts for which the Airport Authority may be obligated to pay, or may receive, less than the threshold amount triggering a requirement of Board approval under the previous subsection. This subsection should not be read to prohibit the CEO from submitting to the Board for its approval contracts which he or she may approve. Notwithstanding the above, (1) the CEO is required to consult with the Chairperson or Vice-Chairperson in order to approve Emergency Procurements up to \$250,000, (2) the CEO may approve a lease of non-terminal Real Property from the Airport Authority only if the term of the lease is 5 years or less, the Airport Authority will receive \$100,000 or less under the lease, and the Director of Real Estate for the Airport Authority, or such other Airport Authority employee then directly responsible for supervising real estate matters for the Airport Authority, certifies in writing that the rental amount payable by the tenant under the lease is fair and commercially reasonable under the circumstances, and (3) the CEO may approve Airport Authority personnel-related contracts, obligations, or other instruments settling or resolving actual or anticipated legal claims by, or disputes with, an employee only if the Airport Authority will be obligated to pay the employee \$100,000 or less and such document contains a written waiver and release of all claims against the Airport Authority by the employee. The CEO may, following consultation with the Chair or Vice Chairperson, delegate to any Senior Vice President of the Airport Authority or above, excluding the General

Counsel, the authority to approve an Emergency Procurement that does not exceed \$50,000.

- C. **Senior Staff Approval Permitted.** Any Senior Vice President of the Airport Authority or above, including the Chief Financial Officer but excluding the General Counsel, may approve contracts for which the Airport Authority may be obligated to pay, or the Airport Authority will receive up to \$25,000, provided: (1) the Board approves the name(s) of the individual(s) authorized to approve such contracts; and (2) the contract approval authorization is valid for no more than one year.
- D. **Procurement Administrator Approval Permitted.** The Procurement Administrator may approve contracts for which the Airport Authority may be obligated to pay, or the Airport Authority will receive, up to \$5,000. This section should not be read to prohibit the Procurement Administrator from acquiring CEO or Board approval, or both, for contracts falling under their approval threshold.

SECTION 2: EXECUTION OF CONTRACTS

- A. **Board Approved Contracts.** Any contract approved by the Board may be executed by any Airport Authority employee specifically designated in the Board's authorizing ordinance or resolution or, in the absence of such designation, the CEO.
- B. **All Other Contracts.**
 - (1) The CEO may execute any contract, including but not limited to Licenses and Permits as defined in Section 2.41 of the Airport Authority's Airport Ordinance, that has been properly procured (if procurement is required) under this Ordinance and properly approved as set forth in Section 1

above, except for those approved by the Board for which the Board specifically designated another person to execute the contract.

- (2) The Procurement Administrator may execute any contract that has been properly procured (if procurement is required) and properly approved as set forth in Section 1 above and for which the Airport Authority may be obligated to pay, or may receive, up to \$5,000, except for those approved by the Board for which the Board specifically designated another person to execute the contract.

C. Delegation of Contract Execution Authority.

- (1) **Voluntary Delegation** – The CEO may delegate in writing (a) to the Chief Financial Officer, or his or her designee, any or all of the CEO’s authority to execute any contract under which the Airport Authority will expend or receive \$100,000 or less; and (b) to any Senior Vice President of the Airport Authority or above, excluding the General Counsel, any or all of the CEO’s authority to execute any contract, provided such delegation is approved by the Board, applies solely to contracts under which the Airport Authority will expend or receive \$25,000 or less, and is valid for no more than one year.
- (2) **Involuntary Delegation** – In the event of the CEO’s death or incapacity to execute contracts, the CEO’s authority to execute contracts shall automatically succeed to the CFO.

D. Document Supplementing a Contract that Requires a Signature. Without Board approval, the CEO may execute any document that is both (1) necessary to operate under and (2) supplemental to a properly approved contract, so long

as the CEO's execution of the document does not further financially obligate the Airport Authority.

SECTION 3: APPROVAL AND EXECUTION OF CONTRACT AMENDMENTS AND CHANGE ORDERS

A. Contract Amendments.

(1) **CEO Approval** – The CEO may approve and execute Contract Amendments so long as:

- (a) The Contract Amendment (i) maintains or reduces the original value of the contract, if the Contract Amendment amends a contract under which the Airport Authority is to expend funds, or maintains or increases the original value of the contract, if the Contract Amendment amends a contract under which the Airport Authority is to receive funds, and, (ii) if the Board approved the contract, the Contract Amendment does not allow the contract scope to either conflict with or substantially deviate from (A) the scope of Board approval contained in the resolution or ordinance approving the contract or (B) any informational materials previously provided to the Board concerning the contract; or
- (b) Such Contract Amendment does not cause the contract to exceed the CEO's contract approval authority for the relevant type of contract. However, if the initial contract was not competitively solicited, the CEO may neither approve nor execute a Contract Amendment under this provision if the amended contract value would have required the contract to be competitively solicited,

were the proposed amended amount of the contract the initial amount of the contract.

- (2) **Procurement Administrator Approval** – The Procurement Administrator may approve and execute Contract Amendments so long as the Contract Amendment does not cause the contract to exceed their contract approval authority.
- (3) **Board Approval** – All other Contract Amendments must be approved by the Board, either directly or through authority delegated by Board resolution or ordinance.

B. Change Orders on Construction Contracts.

- (1) **CEO** – The CEO may approve and execute a Change Order on a Construction contract so long as:
 - (a) The Change Order, together with all other approved Change Orders on the same contract, does not increase the total contract value above its original approved value, or an amended increased value approved by the Board, by the greater of (i) 5% of the Construction contract's original or amended value, as applicable, or (b) \$100,000; and
 - (b) the Change Order either (i) involves an unknown or unforeseeable circumstance on the job site or (ii) was initiated by the Airport Authority as an enhancement of something within the scope of the original Construction contract.
- (2) **CEO Plus Chairperson** – With the written approval of the Chairperson, the CEO may approve and execute a Change Order on a Construction contract so long as:

- (a) The Change Order, together with all other approved Change Orders on the same contract, does not increase the total contract value above its original approved value or an amended increased value approved by the Board by the greater of (i) 10% of the Construction contract's original or amended value, as applicable, or (b) \$250,000;
 - (b) the Change Order either (i) involves an unknown or unforeseeable circumstance on the job site or (ii) was initiated by the Airport Authority as an enhancement of something within the scope of the original Construction contract.
- (3) **Board** – All other Change Orders must be approved by the Board and executed by the CEO.

ARTICLE VI – SUSPENSION, DISQUALIFICATION, AND DEBARMENT

SECTION 1: SUSPENSION, DISQUALIFICATION, AND DEBARMENT OF BUSINESSES

- A. **Authority to Suspend, Disqualify, or Debar**. The Procurement Administrator, after consulting with the General Counsel, is authorized to suspend, disqualify, or debar a Business for cause for consideration for award of contracts by the Airport Authority for a period of up to five years, when such cause is based upon a finding under the Airport Authority's Airport Ordinance, the Airport Authority's Ethics Ordinance, or a finding of impropriety, fraud, or violation of local, State or federal law. Any suspension, disqualification, or debarment of at Business shall take place in accordance with *Exhibit D* to this Ordinance, attached hereto.

- B. **Effective Date.** This Section supersedes all previous Airport Authority suspension, disqualification, and debarment procedures and shall apply to any Debarment actions initiated by the Airport Authority on or after the effective date of this Ordinance.
- C. **Miscellaneous.** This Section is supplemental to, and does not restrict, the Airport Authority's ability to make determinations pertaining to whether a Business is a Responsible as defined by this Ordinance.

ARTICLE VII – MISCELLANEOUS

SECTION 1: CEO MONTHLY REPORT TO BOARD

The CEO shall provide, or cause to be provided, a written report to the Board each month concerning the Airport Authority's activities under this Ordinance for the preceding month. Each report shall contain at least the following information:

- A. **Awarded Contracts Not Competitively Solicited.** A copy of each written determination of the CEO with respect to a contract in the amount of \$25,000 or more that was awarded without Competitive Solicitation pursuant to the subsection entitled "Exceptions for Certain Non-Federally Funded Contracts."
- B. **Certain NCCs.** A list of each NCC with a total contract cost, including Change Orders, which exceeds \$50,000, detailing the reasons why the contract amount exceeded \$50,000.
- C. **Awarded Contracts Not Approved by the Board.** A description of any contract, lease, sale, settlement of a legal claim or dispute, Contract Amendment, Change Order or other item under this Ordinance which was in the amount of \$25,000 or more and entered into without the approval of the Board.

Each monthly report provided for hereunder shall be in such form as the Board may require, and shall contain such additional information as the Board or any member thereof may request. Further, each such monthly report shall be posted on the Airport Authority's website with the minutes of the Board meeting at which the report was provided, so long as it is Airport Authority policy to post such minutes.

**SECTION 2: DISPOSAL OF SURPLUS PERSONAL PROPERTY AND TRASH;
RESTRICTIONS ON AIRPORT AUTHORITY EMPLOYEES**

A. Surplus Personal Property. The Procurement Administrator shall dispose of Surplus Personal Property by using any of the following methods, the method chosen by the Procurement Administrator to be that which they determine to be in the best interests of the Airport Authority:

- (1) Public auctions;
- (2) Advertisements for sealed bids, proposals, or quotes;
- (3) Transfers to other public entities, nonprofits, 501(c)(3) organizations;
- (4) Trade-in on new personal property;
- (5) Recycling; and
- (6) Any canine taken out of Airport Authority service may be given to its handler without charge at the handler's request.

B. Trash. The Procurement Administrator may approve the disposal of Trash by any reasonable commercial means, subject to applicable records retention requirements.

C. Employee Restrictions on Purchase of Airport Personal Property. Employees of the Airport Authority, and members of their Immediate or Extended Families, as defined in the Airport Authority's Ethics Ordinance, may not obtain Surplus Personal Property from the Airport Authority except when such property

is sold at public auction by a third party auctioneer, or as set forth for canines above.

SECTION 3: RECORDS

- A. Records Retention.** All records generated under this Ordinance shall be maintained for the periods set forth or approved by the Michigan Department of Technology, Management, and Budget's Records Management Services unit, or any successor State agency or agencies thereto.
- B. Access to Records.** The Airport Authority shall provide access to its procurement records in accordance with the Michigan Freedom of Information Act.

SECTION 4: DELEGATION OF PROCUREMENT ADMINISTRATOR AUTHORITY

A delegate of the Procurement Administrator may take all actions allowed or required of the Procurement Administrator under this Ordinance unless (i) the action requires that an item be in writing or (ii) otherwise explicitly provided for in this Ordinance.

SECTION 5: SEVERABILITY

If any provision of this Ordinance is held to be invalid by a court or other tribunal of competent jurisdiction, then that invalid provision shall be considered a distinct and independent part of this Ordinance, and such invalidity shall neither affect the validity and enforceability of this Ordinance as a whole nor any provision other than that which was declared invalid.

SECTION 6: EFFECTIVE DATE

This Ordinance shall be effective as of September 18, 2014

EXHIBIT A – DEFINITIONS

- A. “*Addendum*” means a written modification, clarification or correction to, or answer to a question posed by a prospective Bidder, Proposer, or Respondent pertaining to, an RFB, RFP, or RFQ issued by the Airport Authority.
- B. “*A/E Professional Services*” means program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, and any services necessary to perform any of the aforementioned services on the same project.
- C. “*Air Trade Area*” means the counties of Genesee, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne, Michigan.
- D. “*Airports*” means Detroit Metropolitan Wayne County Airport and Willow Run Airport.
- E. “*Airport Authority*” means the Wayne County Airport Authority.
- F. “*Airport Concession Disadvantaged Business Enterprise*” (or “*ACDBE*”) has the meaning set forth in 49 C.F.R. 23.3 and any successor regulation thereto.
- G. “*Airport Facility*” means any of the following at one of the Airports:
 - (1) Real Property or Personal Property, or interest in Real Property or Personal Property, used for the landing, taking off, taxiing, parking, storing, shelter, supply, or care of aircraft, or for receiving or discharging passengers or cargo, and all appurtenant areas used for airport buildings or other airport facilities, and all appurtenant rights-of-way;
 - (2) Real Property or Personal Property, and easements above, on, or under the surface of Real Property or Personal Property, used or intended to be used for over-flight, for noise abatement or noise buffers, for clear zones, or for side transition zones; or

- (3) Real Property or Personal Property, and easements above, on, or under the surface of Real Property or Personal Property, used or intended to be used for the full or partial satisfaction of environmental mitigation requirements imposed by any federal, State, county, or other municipal government or agency as a condition of approving the acquisition, construction, expansion, or operation of other airport facilities, whether or not located within the boundaries of any local unit of government that owns either of the Airports.
- H. *“Bid”* means a document conveying an offer from a party desiring to provide Goods or Services to the Airport Authority in response to an RFB.
- I. *“Bid Guarantee”* means security provided by a Bidder to the Airport Authority with a Bid to guarantee that the Bidder will enter into a contract with the Airport Authority within the time specified in an RFB, based upon the substantive terms and conditions contained in the form of agreement or other terms and conditions included in, or referenced by, the RFB.
- J. *“Bidder”* means a Business that submits a Bid in response to an RFB issued by the Airport Authority.
- K. *“Board”* means the governing body of the Airport Authority.
- L. *“Business”* means an individual, firm, vendor, association, corporation, limited liability company, partnership, joint venture, sole proprietorship, or other legal entity.
- M. *“Business Unit”* means a logical element or segment of the Airport Authority representing a specific business function with a definite place on the Airport Authority’s organizational chart, such as a division or department.
- N. *“Certified SBE”* means an independently owned and operated business headquartered in the Air Trade Area for which any of the following apply:

- a. The Business maintains certification from the Airport Authority as a small business enterprise, which certification shall be granted to Businesses that meet the small business criteria of the United States Small Business Administration;
 - b. the Business maintains small business certification from the United States Small Business Administration; or
 - c. the Business maintains valid certification as a small business enterprise or equivalent (in the discretion of the Procurement Administrator) from any Public Agency located, in whole or in part, within the Air Trade Area.
- O. *“Certified SBE Development Contract”* means a contract available for award only to a Certified SBE pursuant to Exhibit C to this Ordinance.
- P. *“Chairperson”* means the person elected, from time to time, as Chair of the Board.
- Q. *“Change Order”* means a modification to a Construction contract that increases or decreases the contract cost, or modifies the work to be performed or duration of the contract.
- R. *“Chief Executive Officer”* (or *“CEO”*) means the Chief Executive Officer of the Airport Authority.
- S. *“Chief Financial Officer”* (or *“CFO”*) means the Chief Financial Officer of the Airport Authority.
- T. *“Collective Bargaining Agreement”* means any contract between the Airport Authority and a labor union made in accordance with the Michigan Public Employees Relations Act.
- U. *“Competitive Solicitation”* means procurement of Goods or Services by RFB, RFP, RFQ, or SFQ.
- V. *“Concession(s)”* shall have the meaning set forth in 49 C.F.R. 23.3, as may be amended from time to time, or any successor law or statute thereto.

- W. *“Concessionaire”* means a Business that owns and controls a Concession or a portion of a Concession.
- X. *“Construction”* means the building, demolition, remodeling, renovation, or repair of an Airport Facility, including, but not limited to, the design of an Airport Facility pursuant to a contract with a scope of services that includes both the design and construction of an Airport Facility.
- Y. *“Contract Amendment”* means a modification to or extension of a contract, other than a contract for Construction.
- Z. *“Cooperative Purchase Arrangement”* means an arrangement whereby the Airport Authority coordinates some or all of its purchasing efforts with another Public Agency in order to reduce administrative costs, take advantage of quantity discounts, or to share specifications.
- AA. *“Deadline”* means the date and time by which a Bid, Proposal, Response, or Quote must be submitted in reply to an RFB, RFP, RFQ, or SFQ issued by the Airport Authority.
- BB. *“Default”* means a breach of an Airport Authority contract by a Business (1) that has not been cured within the time specified by the Airport Authority, (2) for which the Airport Authority General Counsel has delivered a declaration of default to the Business, or (3) both.
- CC. *“Disadvantaged Business Enterprise”* (or *“DBE”*) has the meaning set forth in 49 C.F.R. 26.5 and any successor regulation thereto.
- DD. *“Emergency Procurement”* means a contract (i) for emergency repair or Construction necessitated by a sudden, unforeseen occurrence or situation of a serious and urgent nature and that is not for convenience or expediency, or (ii) for repair or Construction that is necessary to ensure passenger safety or otherwise protect life or property.

- EE. *“Evaluate”* (or *“Evaluating”*) means to analyze and rate a Proposal, Response or Quote based upon the evaluation criteria contained in the applicable RFP, RFQ, or SFQ to which the Bid, Proposal, Response, or Quote was submitted.
- FF. *“Evaluation Committee”* means a group of individuals responsible for Evaluating a Proposal, Response, or Quote submitted in reply to an RFP, RFQ, or SFQ.
- GG. *“General Counsel”* means the chief internal legal advisor and counselor for the Airport Authority or, if no such position exists internally, the law firm or individual designated as chief legal advisor and counselor by the CEO.
- HH. *“Goods”* means supplies, materials, equipment, or other Personal Property.
- II. *“Intergovernmental Agreement”* means an agreement between the Airport Authority and any Public Agency.
- JJ. *“Legal Services”* means the provision of Services by (i) expert witnesses, (ii) law firms, (iii) attorneys, and (iv) other individuals, when necessary or desirable in the opinion of the General Counsel, to resolve a legal controversy.
- KK. *“Negotiated Construction Contract”* or *“NCC”* means a contract entered into without Competitive Solicitation for Construction of an Airport Facility.
- LL. *“Personal Property”* means anything that is the subject of ownership that is not Real Property, including intellectual property.
- MM. *“Procurement Administrator”* means the individual with primary direct responsibility for the Airport Authority’s Business Unit that is primarily responsible for contracting and procurement, be it a division, department, or some other designation; e.g., the Director of Procurement on the date this Ordinance was adopted.
- NN. *“Proposal”* means a written offer submitted to the Airport Authority in response to an RFP issued by the Airport Authority.

- OO. *“Proposal Guarantee”* means security provided by a Proposer to the Airport Authority with a Proposal to guarantee that the Proposer will enter into a contract with the Airport Authority within the time specified in the RFP, based upon the substantive terms and conditions contained in the form of contract included in the RFP.
- PP. *“Proposer”* means a Business that submits a Proposal in response to an RFP issued by the Airport Authority.
- QQ. *“Protester”* means a Business that files a protest of a solicitation process or contract award recommendation in accordance with Article IV, Section 5 of this Ordinance.
- RR. *“Public Agency”* means the State, a political subdivision of the State or of another state of the United States or of Canada, including, but not limited to, a state government; a county, city, village, township, charter township, school district, single or multipurpose special district, or single or multipurpose public authority; a provincial government, metropolitan government, borough, or other political subdivision of Canada; an agency of the United States government; or a similar entity of any other states of the United States and of Canada.
- SS. *“Quote”* means a written offer submitted to the Airport Authority in response to an SFQ.
- TT. *“Real Property”* means (1) land, (2) non-surplus fixtures attached to land or equipment integrated to land, (3) anything growing on land, and (4) any interest in land, including but not limited to remainder rights, mineral rights, tenancies or estates, certain reverters, airspace rights, and easements.
- UU. *“Request for Bids”* (or *“RFB”*) means a written solicitation that meets the requirements of Article IV, Section 2(A) of this Ordinance.
- VV. *“Request for Proposals”* (or *“RFP”*) means a written solicitation that meets the requirements of Article IV, Section 3(A) of this Ordinance, and for which Proposals are sought from Businesses.

- WW. *“Request for Qualifications”* (or *“RFQ”*) means a written solicitation that meets the requirements of Article IV, Section 3(A) of this Ordinance, and for which Responses are sought from Businesses.
- XX. *“Requisition”* means a written document transmitted by a Business Unit to request a contract, an amendment, or contract change order from the Airport Authority’s procurement staff.
- YY. *“Respondent”* means a Business that submits a Response or Quote, as applicable, to the Airport Authority.
- ZZ. *“Response”* means a written offer submitted to the Airport Authority in response to an RFQ.
- AAA. *“Responsible”* means a status whereby a Business meets each and every minimum qualification or other requirement set forth in the applicable RFB, RFP, RFQ, or SFQ, and is eligible to contract with the Airport Authority under the subsection of this Ordinance entitled “Ineligibility of Businesses in Arrears to or Default with the Airport Authority, Debarred, or in Violation of the Airport Authority’s Ethics Ordinance.”
- BBB. *“Responsive”* means a status whereby a timely-submitted Bid, Proposal, Response, or conforms to all material requirements of the RFB, RFP, or RFQ, or SFQ in response to which it was submitted.
- CCC. *“Services”* means the furnishing of labor, time, or effort by a Business.
- DDD. *“Single Source Procurement”* means a procurement whereby the desired Goods or Services are commercially available from only one source.
- EEE. *“Solicitation for Quotes”* (or *“SFQ”*) means a written solicitation that meets the requirements of Article IV, Section 4(B) of this Ordinance, and for which Quotes are sought from Businesses.

- FFF. “*Special Exception Contract*” means any contract procured under the subsection of this Ordinance entitled “Special Exceptions Under MCL 259.114(6)(c).”
- GGG. “*Specialty Trade Contractor*” means any Business of a type which falls under North American Industry Classification System Subsector 238, “Specialty Trade Contractors.”
- HHH. “*State*” means the State of Michigan.
- III. “*Surplus*” means any item of furniture, fixtures, equipment, supplies or other Personal Property owned by the Airport Authority that is no longer needed by the Airport Authority, which is not Trash.
- JJJ. “*Trash*” means any Personal Property owned by the Airport Authority that has little or no value and is uneconomical to store or offer for sale.

EXHIBIT B – WAYNE COUNTY AIRPORT AUTHORITY VOUCHER POLICY

SECTION 1: BACKGROUND

The Procurement Ordinance establishes requirements for procurement and contracting for most Goods and Services for the Airport Authority's Business Units. In accordance with MCL 259.114(6)(c), this Voucher Policy, at Section 4, sets forth certain types of procurements and payments (and the execution of contracts and/or supplemental documents in connection therewith) for which the Board has determined, because of the inherent nature of such procurements/payments, that Competitive Solicitation is neither practical nor appropriate to efficiently and effectively meet the Authority's needs. Nothing in this Voucher Policy is intended to supersede or circumvent the Airport Authority's Purchasing Ordinance.

SECTION 2: DEFINITIONS

Capitalized terms used but not defined in this Exhibit shall have the meanings assigned to them in the Procurement Ordinance.

SECTION 3: VOUCHER APPROVAL

- A. **CEO or CFO.** Any procurement of Goods or Services (and the execution of contracts and/or supplemental documents in connection therewith) under this Voucher Policy which requires payment by the Airport Authority of not more than \$100,000 within a consecutive 12-month period for the same type of procurement may be approved in writing by the Authority's CEO or CFO. However, the monetary limit set forth above shall not apply where the CEO or CFO is (1) otherwise authorized to act by the Board, (2) compelled to act to maintain the Airport Authority's compliance with the laws and regulations of the United States, the State, any subunit of either, or combination thereof, or (3) where there is but

a sole source for the procurement and the procurement is necessary to maintain operations at the Airports, such as with utility bills for gas or electricity.

- B. Board.** Any procurement of Goods or Services under this Voucher Policy which require payment by the Authority of more than \$100,000 within a consecutive 12-month period for the same type of procurement must be approved by the Board.

SECTION 4: AUTHORIZED USES FOR VOUCHERS

- A. General Department Uses.** A voucher may be used to pay for the following:

- (1) Utility bills for gas, electricity, and water/sewer costs
- (2) Telephone bills/costs (excluding equipment)
- (3) Advertisements
- (4) Postage
- (5) Postal overnight or other express mail services
- (6) Fingerprinting fees
- (7) US Customs fees
- (8) Bid/proposal guarantee forfeitures and refunds
- (9) Refunds of deposits and other miscellaneous receipts
- (10) Court fees
- (11) Deposition fees
- (12) Litigation expenses (excluding court reporters)
- (13) Inmate related expenses
- (14) Service fees for banks and other credit/financial institutions
- (15) Professional dues and membership fees
- (16) Subscriptions to periodicals, journals, and other similar publications
- (17) Employee expense reimbursements (e.g., tuition, mileage, etc.)

- (18) License and permit fees (excluding software licenses)
- (19) Conference, training and/or seminar fees
- (20) Business travel related expenses (e.g., airline tickets, automobile rental fees, meals, lodging, etc.)
- (21) Meeting expenses (e.g., catering costs, teleconferencing room fees, equipment rental fees, etc.)
- (22) Petty Cash reimbursements

B. Payment of Payroll Taxes and Withholdings. A voucher may be used to remit payroll taxes and other withholdings to the appropriate government or agency, including the following:

- (1) Remittance of employee taxes withheld
- (2) Payment of employer payroll taxes
- (3) Payment of Airport Authority unemployment taxes
- (4) Remittance of voluntary and involuntary payroll deductions

C. Payment of Use or Sales Taxes. A voucher may be used to remit to the appropriate taxing authority use or sales taxes assessed in connection with the Airport Authority's operation of Detroit Metropolitan Wayne County Airport or Willow Run Airport.

D. Payment of Expenses Related to Bond Financing. A voucher may be used to pay certain expenses normally incurred for long- or short-term financing, if the authorizing resolution approved by the Board is referenced on the voucher that is used to pay expenses related to such long- or short-term financing. Further, the following are the only expenses related to bond financing that may be paid on a voucher when referenced in an Airport Authority bond resolution:

- (1) Debt principal and interest payments

- (2) Rebate of any arbitrage earnings required under the Internal Revenue Code
- (3) Trustee fees
- (4) Financial printing and binding service fees
- (5) Bond insurance or letter of credit fees
- (6) Rating agency fees
- (7) Securities and Exchange Commission registration fees
- (8) Federal and State filing and registration fees
- (9) Legal counsel for trustees and underwriters that are not selected by the Airport Authority
- (10) Other bond closing costs when supported by a final bond settlement statement prepared by the Airport Authority's financial advisor, financial consultant, or CFO

E. Payment of Expenses Related to the Purchase of Real Estate. A voucher may be used to pay expenses incurred concerning the purchase of real estate when the Board has approved the purchase. The Board resolution approving such purchase must be clearly indicated on the face of the voucher. The following related expenses may also be paid by voucher under these circumstances:

- (1) Title insurance
- (2) Transfer taxes
- (3) Appraisal fees
- (4) Recording fees
- (5) Environmental survey costs
- (6) Real property taxes and assessments (which have become or are to

become liens against real property owned or operated by the Airport Authority)

F. Payment of Insurance Premiums and Self-Insured Losses. A voucher may be used to pay insurance premiums when authorized by the Airport Authority's Finance Business Unit. The voucher must indicate the policy number, type of coverage, and dates of coverage; and a copy of the policy must be on file with the Airport Authority's Finance Business Unit. A voucher may also be used for payment of insurance deductibles and certain self-insured employee benefit programs administered by the Airport Authority. These payments include the following:

- (1) Employee and retiree health insurance programs
- (2) Employee and retiree life insurance programs
- (3) Employee and retiree optical reimbursements
- (4) Employee dental reimbursements
- (5) Payments to third party administrators
- (6) Worker's compensation medical payments
- (7) Self-insured losses
- (8) Fidelity/surety bonds

G. Payment of Litigated Claims, Assessments and Settlements. A voucher may be used only by the General Counsel for payment of litigated claims, assessments and settlements, which have been approved in accordance with the Procurement Ordinance. In situations where a check is requested in anticipation of the Board's approval of a settlement, the voucher must clearly indicate that the check will not be released by the General Counsel until such approval is obtained, and shall be signed by the General Counsel. Once approved, a copy

of the Board resolution shall be forwarded to the Chief Financial Officer, or their designee, for verification and filing.

- H. **Payment of Credit Card Statements.** A voucher may be used to process payment of invoices for credit or charge cards issued to Airport Authority board officers, members or authorized staff. The Airport Authority's Internal Auditor shall conduct a periodic review of Airport Authority credit card transactions.
- I. **Payments Approved by the Board or CEO.** A voucher may be used to process payment for any procurement of Goods or Services, or payment of settlement of a claim or dispute filed against the Airport Authority, or other expenditure of funds, which has been approved by the Board or CEO in accordance with the Procurement Ordinance.

SECTION 5: AUTHORIZED SIGNERS OF VOUCHERS; BUDGET LIMITATION

- A. **Authorized Signers of Vouchers.** When properly authorized as set forth in Section 3 above, a payment on a voucher for an approved use must be signed by at least two of the following: CEO, CFO, General Counsel, Senior Vice President, Vice President, Director, or Deputy Director, in accordance with the monetary limits approved in the budget for the appropriate line item expense.
- B. **Budget Limitation.** Only the CEO and CFO, signing together, may exceed an approved budget amount. When signing so, the approved budget amount may not be exceeded by not more than 10% of the current line item budget, and the circumstance must be one whereby exceeding the budget could not be anticipated.

EXHIBIT C – SMALL BUSINESS ENTERPRISE PROGRAM

SECTION 1: PURPOSE

The purpose of the Airport Authority's Small Business Enterprise Program is to increase opportunities for qualified small Businesses domiciled in the Air Trade Area to participate in Airport Authority contracts that are not funded, in whole or in part, with federal funds.

SECTION 2: DEFINITIONS

Capitalized terms used but not defined in this Exhibit shall have the meanings assigned to them in the Airport Authority's Procurement Ordinance.

SECTION 3: EQUALIZATION CREDIT PROGRAM

A. Equalization Credits for Solicitations. Notwithstanding any provision in Article IV of the Procurement Ordinance to the contrary, for purposes of evaluation of Bids, Proposals, Responses and Quotes under Article IV of the Procurement Ordinance, an equalization credit will be available to Certified SBEs and other Businesses that respond to a solicitation, as follows:

- (1) Subject to the provisions of subsection (3) below, for contracts valued up to and including \$100,000, a 3% equalization credit is available to a Certified SBE that responds to a solicitation as a prime contractor.
- (2) Subject to the provisions of subsection (3) below, for contracts valued at more than \$100,000, a 2% equalization credit is available to a Certified SBE that responds to a solicitation as a prime contractor.
- (3) A Certified SBE that responds to a solicitation as a prime contractor, but will not directly perform or provide at least 30% of the scope of the Services or Goods solicited, will be treated as a Business that is not a Certified SBE and only will be eligible for the equalization credit provided

in subsection (4), subsection (5) or subsection (6) below, as the case may be, if it meets the applicable requirements set forth therein.

- (4) For contracts valued up to and including \$100,000, a 2% equalization credit is available to a Business that is not a Certified SBE, that responds to a solicitation as a prime contractor and submits a Bid, Proposal, Response or Quote that includes Certified SBE subcontractor(s) that will perform or provide at least 30% of the value of the Services or Goods solicited. Prime contractors cannot substitute for a listed Certified SBE subcontractor without prior approval of the Chief Executive Officer.
- (5) For contracts valued at more than \$100,000, a 1% equalization credit is available to a Business that is not a Certified SBE that responds to a solicitation as a prime contractor and submits a Bid or Quote that includes Certified SBE subcontractor(s) that will perform or provide at least 30% of the value of the Services or Goods solicited. Prime contractors cannot substitute for a listed Certified SBE subcontractor without prior approval of the Chief Executive Officer.
- (6) For all contracts, a 1% equalization credit is available to a Business that is not a Certified SBE, that responds to a solicitation as a prime contractor and submits a Bid, Proposal, response or Quote that includes Certified SBE subcontractor(s) that will perform or provide at least 20% but less than 30% of the value of the Services or Goods solicited. Prime contractors cannot substitute for a listed Certified SBE subcontractor without prior approval of the Chief Executive Officer.

B. Application of Equalization Credits.

- (1) The equalization credits described in subsection (a) above will be applied during the evaluation processes set forth in Article IV of the Procurement Ordinance based upon the type of solicitation, and shall be used to determine the lowest bidder or the most Responsible Proposer, Respondent, or Business submitting a Quote, but shall not affect a Bid or Quote total or the fee total in a Proposal.
- (2) With respect to RFBs and to SFQs based on price only, in determining the lowest bidder or Quote, the amount of the Bid or Quote of a Business entitled to an equalization credit pursuant to subsection (a) above will be reduced by the applicable equalization credit percentage of the lowest Bid or Quote submitted by a Business that is not entitled to an equalization credit pursuant to subsection (a) above.
- (3) With respect to RFPs, RFQs, and SFQs based on price and other evaluation criteria, in evaluating the applicable Proposals, Responses and Quotes, a Business entitled to an equalization credit pursuant to subsection (a) above will receive additional points equal to the applicable equalization credit percentage of the total points available to be assigned to Proposers, Respondents or Businesses submitting Quotes, as the case may be, by the Evaluation Committee, as established by the Evaluation Committee in accordance with the provisions of Article IV of the Procurement Ordinance.

SECTION 4: CERTIFIED SBE DEVELOPMENT CONTRACT PROGRAM

- A. Applicability.** When an RFP, RPB, or SFQ is being used to procure the following types of contracts and the total costs of the contract do not exceed the amounts, the Airport Authority, through the Procurement Administrator, may designate the contracts as a Certified SBE Development Contract to which the below provisions of this Section 4 shall apply: (1) a Construction contract the total costs of which do not exceed \$1,000,000 and for which the contractor will not be a Specialty Trade Contractor; (2) a contract the total costs of which do not exceed \$500,000 and for which the contractor will be a Specialty Trade Contractor; and (3) all other contracts the costs of which do not exceed \$200,000.
- B. Certified SBE Development Contract Implementation.**
- (1) Where the Procurement Administrator has determined that three or more Certified SBEs are available and willing to provide the desired Construction, Goods, or Services, the Procurement Administrator may, in their sole discretion and in collaboration with the head of the Business Unit that originated the relevant Requisition – on the basis of contract category, type, size standard or other consistent criteria for selection – identify and select those contracts for award only to Certified SBEs under this Section 4.
- (2) Where so done, the Procurement Administrator shall require, as a matter of Responsiveness to the RFB, RFP, RFQ, or SFQ, that a Business possess Certified SBE status as of the Bid, Proposal, Response, or Quote Deadline.
- C. Development of Forms and Procedures.** The Procurement Administrator shall develop and utilize such forms and procedures as necessary to ensure the

efficient and ongoing application of this Certified SBE Development Contract program.

SECTION 5: REDUCING BARRIERS TO CERTIFIED SBE PARTICIPATION IN AIRPORT CONTRACTING

Airport Authority staff shall revisit bonding, insurance, permitting, and other Airport Authority policies and procedures from time to time in order to determine if they are serving as barriers to increasing the participation of Certified SBEs in Airport Authority contracts. Where this is the case, Airport Authority staff should take reasonable measures to eliminate the barriers to the extent possible, without compromising the safety, security, or business operations of the Airport Authority.

EXHIBIT D – SUSPENSION, DISQUALIFICATION, AND DEBARMENT

SECTION 1: DEFINITIONS

The following words, terms and phrases, when used in this Exhibit, shall have the meanings ascribed to them in this section:

- A.** *“Contractor”* means any individual, partnership, corporation or business entity that seeks to obtain or has obtained any Contract or subcontract with the Airport Authority.

- B.** *“Debarment”* means action taken by the Airport Authority to bar a Contractor from doing business with the Airport Authority for a period of time not to exceed five years.

- C.** *“Disqualification”* means action taken by the Airport Authority to bar a Contractor from doing business with the Airport Authority for a period of time not to exceed two years.

- E.** *“Suspension”* means action by the Airport Authority to bar a Contractor from doing business with the Airport Authority during a period when investigation into possible Disqualification or Debarment is underway. The Suspension period may not exceed 120 days.

Capitalized terms used but not defined in this Exhibit shall have the meanings assigned to them in the Airport Authority’s Procurement Ordinance.

SECTION 2: BASIS FOR SUSPENSION, DISQUALIFICATION OR DEBARMENT; ACTION BY THE PROCUREMENT ADMINISTRATOR

The Procurement Administrator, in consultation with the General Counsel, shall determine if due cause exists for Suspension, Disqualification, or Debarment of a Contractor. Such due cause shall be based upon a finding under the Airport Authority’s

Airport Ordinance or Ethics Ordinance, a finding of impropriety, a finding of fraud, a finding of violation of local, State or federal law, a finding from a previous hearing which affects the Responsibility of a Contractor, or other act so serious as to affect the Responsibility of a Contractor. If the Procurement Administrator determines that such due cause exists, they may Disqualify or Debar the Contractor, at their discretion.

A. Suspension. At the commencement of a Disqualification or Debarment proceeding, the Procurement Administrator shall Suspend the Contractor in question for 120 days or until a Disqualification or Debarment decision has been reached, whichever occurs first. The Procurement Administrator shall promptly provide a written notice of this Suspension in writing to the Contractor. Such notice shall provide the following:

- (1) That the Contractor may be subject to Disqualification or Debarment by the Airport Authority, and that the Suspension will last for 120 days or until a Disqualification or Debarment decision has been reached, whichever occurs first.
- (2) That Bids, Proposals, and Responses from the Suspended Contractor will be Disqualified, and that the Airport Authority will not do business with the Contractor while it is suspended.
- (3) The alleged action(s) of the Contractor that constitute the reasons for Disqualification or Debarment.

B. Disqualification or Debarment. The following shall constitute causes sufficient for Disqualification or Debarment:

- (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract.

- (2) Conviction under State or federal statutes of embezzlement, theft, forgery, bribery, fraud, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which affects Responsibility as a Contractor.
- (3) Conviction under State and federal antitrust statutes arising out the submission of bids or proposals.
- (4) Disqualification for a second time within a three-year period.
- (5) Fraudulently obtaining certification as a small, minority, disadvantaged or female business enterprise.
- (6) Knowingly, willfully or fraudulently:
 - a. Making use of a joint venture or subcontractor that has fraudulently obtained certification as a small, minority, disadvantaged or female business enterprise;
 - b. Making use of a joint venture or a subcontractor that misrepresents the nature of and extent of participation in such business on city contracts; or
 - c. Otherwise making false or misleading representations to the Airport Authority as to the use or misuse of a small, minority, disadvantaged or female business enterprise.
- (7) Any other cause so serious and compelling as to affect Responsibility as a Contractor, including Debarment by another governmental entity.
- (8) Making any material misrepresentation of the composition of the ownership or work force of a business entity certified to the Airport Authority as a small, minority, disadvantaged or female business enterprise.

(9) Knowingly misrepresenting to the Airport Authority of the use which a majority-owned Contractor intends to make of a small, minority, disadvantaged or female business enterprise, and as a subcontractor or a joint venture partner, in performing work under contract with the Airport Authority.

C. When to Disqualify or Debar. In recognition of the fact that a Debarment may have broad consequences applicable to other federal, State, and local procurement processes and individual procurements, the Procurement Administrator shall reserve Debarment for more egregious instances of Contractor misbehavior. Notwithstanding the same, the Procurement Administrator is vested with full authority and discretion to Disqualify or Debar as set forth herein.

SECTION 3: RIGHTS OF CONTRACTORS AND THIRD PARTIES

A. Contractor Right to Appeal. Upon receipt of a notice of Suspension, Disqualification or Debarment, the Contractor shall have 10 working days to appeal to the Procurement Administrator. The appeal must be in writing, specifying all details for appealing the decision.

B. Contractor Right to Request Hearing. A Contractor or prospective Contractor who has been notified of a proposed Disqualification or Debarment action may request in writing that a hearing be held. Such request must be received by the Procurement Administrator within 10 days of the Contractor's receipt of notice of the proposed action.

C. Third Party Rights. Any other party directly affected by a Disqualification or Debarment may appeal such determination to the Procurement Administrator or request a hearing as if it were a Contractor. It is the intent of the Airport Authority

to ensure all parties' basic guarantees of due process are maintained.

SECTION 4: ADDITIONAL AUTHORITY OF THE PROCUREMENT ADMINISTRATOR

- A. Informal Conferences.** The Procurement Administrator may hold informal conferences to settle issues, simplify and set forth the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding either by request or consent of the parties, or upon the Procurement Administrator's own motions.
- B. Administrative Powers.** The Procurement Administrator may fix time limits and require parties to produce for examination those relevant witnesses and documents under their control.

SECTION 5: HEARINGS

- A. Hearing Date.** Within ten days of the date of (i) receipt of a notice of a request for a hearing from the Contractor or third party or (ii) the Procurement Administrator's independent determination that a hearing should occur, the Procurement Administrator shall set the matter for a hearing, which hearing shall be held not more than 30 days from such receipt or determination, as applicable.
- B. Notice of Hearing.** The Procurement Administrator shall cause a written notice of hearing to be served upon all parties by registered mail and, if possible, email, which shall state the date, time and place of hearing. Such notice shall also inform the parties of due process rights and relevant procedural matters.
- C. Hearing.** At the hearing, all parties shall be provided a full and fair opportunity to be heard. Each party may be represented by counsel. Each party may present documentary evidence and the sworn testimony of witnesses, and shall have the right to object to the introduction of documents and to cross-examine opposing witnesses. Although formal rules of evidence shall not apply, the Procurement

Administrator shall cause a record to be made of the proceeding, through the use of a court reporter or by way of electronic tape recording with subsequent transcription.

SECTION 6: FINAL DECISION

- A. Timing.** The Procurement Administrator shall issue their decision as follows:
- (1) **Hearing.** Within ten calendar days of the conclusion of the hearing, and based upon a preponderance of the evidence presented, the Procurement Administrator shall render a written decision which shall contain findings of fact and conclusions of law, which may affirm, reverse or otherwise alter a determination to Disqualify or Debar a Contractor.
 - (2) **No Hearing.** If no appeal or request for hearing is received by the Procurement Administrator within the ten-day period during which a Contractor or third party may file the same, a final decision may be made by the Procurement Administrator as soon as the day after that ten-day period has elapsed, but not later than 120 days after the commencement of the Disqualification or Debarment proceeding
- B. Notice.** The Procurement Administrator shall provide notice of the final decision by registered mail and, if possible, electronic mail, not later than 5 business days after they have reached such decision.
- C. Finality.** The decision of the Procurement Administrator shall be binding on all parties, subject to any right of appeal as may be provided by State or federal law.