



**MANATEE COUNTY PORT AUTHORITY  
PROCUREMENT POLICY**

**Effective: 05/20/21**

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# **CHAPTER I - GENERAL PROVISIONS**

## **1.01 EXECUTIVE SUMMARY**

The Manatee County Port Authority Procurement Policy (“Port Procurement Policy”) was created to establish confidence in the procurement process, ensure that all persons involved in the procurement process are treated fairly and equitably, and provide the Port with quality economical services and goods in a timely manner. The Port strives to conduct the entire public purchasing process in an open and ethical manner, without conflicts of interest, favoritism, or the appearances of impropriety. To this end, while the Port as a dependent special district is only required to comply with certain specified procurement provisions in the Florida Statutes, such as those governing public construction, certain types of investments, auditor selection and consultants competitive negotiation, the Port has further limited itself as described in this policy to ensure fair, equitable, and open procurements. The Port Procurement Policy provides an effective central purchasing program that maximizes the value obtained by the Port in the expenditure of funds through free and open competition between the most qualified, responsive and responsible persons or firms interested in providing necessary goods and services to the Port in a timely manner. As the Port continues to grow, the need may arise and the Port reserves the rights to waive, review, supplement, or rescind any policies or portion of the Port Procurement Policy from time to time as it deems appropriate. Port personnel will be notified of such changes to the Port Procurement Policy as they occur. This manual shall serve as a general guide, but specific questions or concerns related to construction contracts which are not addressed here should be directed to the Purchasing Official. If necessary, the Purchasing Official will seek guidance from relevant department directors and/or the Executive Director.

## **1.02 AUTHORITY**

The authority to procure goods or services is in accordance with the following purchasing thresholds:

**Authority Threshold Table 1**

<b>Authority Threshold Category</b>	<b>Purchase Dollar Amount (per item)</b>	<b>Authority</b>
Category One	\$0 - \$ 2,500.00	Designated department personnel
Category Two	\$2,500.01-\$200,000.00	Executive Director or designee
Category Three	\$ 200,000.01 or more	Port Authority

The Purchasing Official shall ensure that all purchases are in accordance with applicable laws, rules, regulations, policies and procedures relating to the expenditures of port funds.

Before entering into any agreement, contract or arrangement that obligates the Port to pay a sum of money or otherwise perform in some manner, proper purchasing procedures must be followed in accordance with the Port Procurement Policy. Any person who intentionally (or knowingly) abrogates the Port policies and procedures may be held personally liable and accountable for any and all indebtedness and other incurred obligations arising from his/her actions.

### **1.03 DEFINITIONS**

1. Advertise – Unless otherwise provided in this Port Procurement Policy or by law, advertise means electronic posting.
2. Best - means the highest overall value to the Port based on factors that include, but are not limited to, price, quality, design, timeliness, and workmanship.
3. Bidder – means a person or entity replying to an ITB, RFP, ITN or RFI.
4. Change Order – means a written order amending an existing Purchase Order or Contract to correct errors, omissions, or discrepancies, to cover acceptable overruns and freight costs, to expand or reduce the scope of goods or services ordered, to expand or reduce contract duration, or to direct other changes in contract execution to meet unforeseen field, emergency, climatic, regulatory or market conditions.
5. Competitive Selection - means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.
6. Continuing Contract – means a contract that allows for incremental execution using individual task/work orders or professional service agreements.
7. Contract - means (a) a deliberate verbal or written agreement between two or more competent parties to perform a specific act or acts; (b) any type of agreement regardless of what it is called for the procurement of goods, services, consultant services, or construction; and (c) a purchase order.
8. Design-Build Contract – as defined in Section 287.055, Florida Statutes, as amended from time to time, currently it means a single contract with a design-build Firm for the design and construction of a public construction project.
9. Design Criteria Package – as defined in Section 287.055, Florida Statutes, as amended from time to time, currently it means concise, performance-oriented drawings or specifications of the public construction project. The purpose of the design criteria package is to furnish sufficient information to permit design-build firms to prepare a bid or a response to an agency's request for proposal, or to permit an agency to enter into a negotiated design-build contract. The design criteria package must specify

performance-based criteria for the public construction project, including the legal description of the site, survey information concerning the site, interior space requirements, material quality standards, schematic layouts and conceptual design criteria of the project, cost or budget estimates, design and construction schedules, site development requirements, provisions for utilities, stormwater retention and disposal, and parking requirements applicable to the project.

10. Design Criteria Professional – as defined in Section 287.055, Florida Statutes, as amended from time to time, currently it means a firm who holds a current certificate of registration under Chapter 481 to practice architecture or landscape architecture or a firm who holds a current certificate as a registered engineer under Chapter 471 of the Florida Statutes to practice engineering and who is employed by or under contract to the agency for the providing of professional architect services, landscape architect services, or engineering services in connection with the preparation of the design criteria package.
11. Electronic posting or electronic post – means the noticing of solicitations, or other matters related to procurement on a centralized Internet website designated by the Port for this purpose.
12. Emergency Purchase – means an expeditious purchase of goods, services, consultant services and/or construction to reduce an imminent or existing threat to the health, safety or welfare of persons or property within the Port or to remedy a situation that seriously handicaps the operation of the Port and the procurement is not possible or practicable through a vendor competitively selected, as provided for in Chapter V.
13. Executive Director – means the administrator, executive officer and manager of Port Manatee responsible for carrying out and executing the legislative policies and decisions duly adopted by the Port Authority.
14. Firm - means an individual firm, partnership, corporation, association or other legal entity permitted by law to practice architecture engineering in the State of Florida. A "firm" may be a partnership, joint venture or other entity wherein the principals thereof are a general contractor or a building contractor and an architect, engineer or other design professional.
15. Invitation to Bid or ITB – means a written or electronically posted solicitation for competitive sealed bids for the purchase of goods, services, and/or construction. The invitation for bid is used when the Port is capable of specifically defining the scope of work for which the contractual service is required or when the Port is capable of establishing precise specifications defining the actual commodity or group of commodities required.
16. Invitation to Negotiate or ITN – means a written or electronically posted solicitation for competitive sealed replies to select one or more vendors with which to commence negotiations for the procurement of goods or services.

17. Manatee County Port Authority or Port Authority – means the Board of County Commissioners of Manatee County, Florida, acting as the governing board of the Port.
18. Port – means Port Manatee, a dependent special district, is a seaport created by the Florida Legislature under Chapter 67-1681, Special Acts of Florida (1967), and restated by Chapter 2003-351, Laws of Florida (2003), as amended by Chapter 2011-253, Laws of Florida (2011).
19. Project - means public construction project, a grouping of minor construction, rehabilitation or renovation activities or a grouping of substantially similar construction, rehabilitation or renovation activities.
20. Purchase Order or PO – means a legal document authorizing the purchase of and subsequent payment for materials, supplies, equipment, construction, repairs, services, etc.
21. Purchase Requisition – serves to inform the Purchasing Department of the needs of a specific user and to define correctly the material or service requested, and is required for the purchase of any items not of an emergency nature and not covered under Petty Cash, Purchasing Card, or Check Request.
22. Purchasing Card Administrator – means the Director of Business Administration & Finance or designee.
23. Purchasing Official - The Purchasing Official as designated by the Finance Department oversees all capital procurements and all other procurements. For the procurement of CCNA (e.g., professional architectural, engineering, landscape architectural, or surveying and mapping) services and public construction projects, the Purchase Official shall be the Engineering Department's Director.
24. Request for Information or RFI - means a written or electronically posted request made by the Port to vendors for information concerning commodities or contractual services. Responses to these requests are not offers and may not be accepted by the Port in the form of a binding contract.
25. Request for Proposal or RFP - means a written or electronically posted solicitation for competitive sealed proposals for goods, consultant services, and/or other services. A Request for Proposals is used when it is not practicable for the Port to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required and when the Port is requesting that a responsible vendor propose a commodity, group of commodities or contractual service to meet the specifications of the solicitation document. Evaluation of a proposal or response is based on prior established criteria which involves more than price. The RFP shall provide the evaluation criteria and state the relative importance the applicable evaluation criteria.



26. Request for Quote or RFQ - means an oral, electronic, or written informal request for written pricing or services information from a vendor for goods or services.
27. Responsible vendor or bidder - means a vendor or bidder who has capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.
28. Responsive bid or responsive proposal or responsive reply - means a bid, proposal, or reply submitted by a responsible vendor that conforms in all material respects to the solicitation.
29. Responsive vendor or bidder - means a vendor or bidder that has submitted a bid, proposal, or reply which conforms in all material respects to the solicitation.
30. Sole source or Single Source - means a purchase when research has determined there is only one potential vendor for the good or service.
31. Substitution - means a shipment of an item that materially conforms to the specifications, but is technically different from the item bid.

#### **1.04 COOPERATIVE PROCUREMENT**

Unless otherwise prohibited by law or grant agreement terms, the Purchasing Official is authorized to negotiate with other public procurement officials for the conduct of a joint procurement on behalf of each participating public agency where, in the judgment of the Purchasing Official, doing so would leverage the benefits of volume purchases, create clear delivery and/or supply chain advantages, and/or create a demonstrable and substantial reduction of administrative time and expense. Examples of cooperative procurement events can include joint solicitations or use of a third party-aggregator or broker.

In any agreement for the acquisition of goods or services, other than Professional Services governed by Section 287.055, Florida Statutes, between the Port Authority and a vendor which has resulted from a competitive solicitation process, the Purchasing Official is authorized to include a term in the solicitation and contract authorizing the contract to be utilized by other public agencies to acquire the same goods and services, more commonly referred to as “piggybacking”.

#### **1.05 CONTRACT RENEWALS AND CONTINUING CONTRACTS**

1. Unless otherwise specified in the contract, contracts for goods and services may be renewed for an additional term not to exceed the original contract period unless the original contract period is 24 months or less, in which case the contract may be renewed for up to three one-year periods. Renewal of the contract shall be by mutual agreement in writing and shall be subject to the same terms and conditions set forth in

the initial contract. If the service or good is purchased as a result of the solicitation of bids or proposals, the cost of any contemplated renewal shall be included in the invitation to bid or the request for proposals. Renewals shall be contingent upon satisfactory performance evaluation by the Port.

2. Nothing in this Procurement Policy shall be construed to prohibit a continuing contract between a firm and the Port consistent with the requirements of applicable law.

## **1.06 TERMINATION OF CONTRACT; RESCISSION OF AWARD**

Termination of any contract or rescission of award must be made by the awarding authority; and in all cases where the Port Authority takes action, Port Authority will consider the Executive Director's recommendation prior to termination or rescission. The Executive Director will examine the circumstances and reasons behind the breach of contract, or other reasons for rescission or termination, consult with legal counsel, and determine if there is a solution possible in the situation. If a breach of contract occurs, or rescission of award or termination of the contract is necessary, the Executive Director may suspend or debar the subject vendor for failure to perform under the terms of the Port Procurement Policy in accordance with Section 1.16 Suspension or Debarment.

## **1.07 PUBLIC RECORDS**

Any vendor/contractor providing goods or services to the Port must maintain and provide access to any records the vendor has related to the provision of those goods and service to the Port. Pursuant to Section 119.0701, Florida Statutes, in any contract entered into by the Port, where the contract is acting on behalf of the Port, the vendor/contractor must agree to comply with the Public Records Act, specifically including:

- (a) keeping and maintaining public records that ordinarily and necessarily would be required by the public agency in performing the services of the Agreement;
- (b) provide the public with access to the public records under the same terms and conditions that the Port would provide the records and at a cost that does not exceed the cost provided for by law;
- (c) ensure that the public records that are exempt or confidential, and exempt from public record disclosure requirements, are not disclosed, except as authorized by law; and
- (d) meet all requirements where retained public records and transfer, at no cost, to the Port, all public records in possession of the contractor, upon termination of the contract and destroy any duplicate public records that are exempt or confidential, or exempt from public record disclosure requirements.

Furthermore, the vendor/contractor shall provide to the Port all records stored electronically in a format that is compatible with the information technology systems of the Port. The

vendor/contractor shall promptly provide the Port with a copy of any request to inspect or copy public records that are in the possession of the vendor/contractor and provide the Port with a copy of the vendor/contractor's response to each request. A vendor's/contractor's failure to comply with this provision of the Port Procurement Policy will be deemed a default and may provide cause for termination of the contract and debarment.

Retention – All procurement records shall be retained and disposed of in accordance with record retention guidelines and schedules approved by the Department of State, Division of Archives, for the State of Florida. All retained documents shall be made available to the Department of State upon request and proper receipt therefor.

### **1.08 LEGAL REVIEW OF ALL CONTRACTS**

The Port legal counsel shall review and approve the form of all Competitive Threshold Category Three contracts in excess of \$50,000.00 prior to contract approval and executions. The Port legal counsel shall review and approve the form of all leases with a term of greater than one year, licenses, and operating agreements.

### **1.09 GRANTS AND GOVERNMENTAL VENDORS**

In connection with any grant to the Port Authority by any federal, state or other governmental entity or in connection with any vendor who is a federal, state or other governmental entity having legal requirements inconsistent with the provisions of this policy, the inconsistent provisions of this policy are hereby waived and the legal requirements of said governmental entity shall be complied with to the extent authorized by law. Further, Port Purchasing Procedures shall be developed consistent with state and federal grant regulations.

Prior to awarding any contract, all potential vendors to be paid with federal funds will be verified against the System for Award Management (SAMS) at [www.sam.gov](http://www.sam.gov) for confirmation that the vendor has not been disbarred or excluded from receiving federal contracts or funds. Wording referring to this policy may be included on purchasing documents and contracts as deemed appropriate.

## **CHAPTER II - COMPETITIVE SOLICITATION REQUIREMENTS**

The Port will comply with the competitive solicitation requirements of:

- 1) Auditor Selection provided for in Section 218.391 of the Florida Statutes;
- 2) Local Government Investment Policies provided in Section 218.415 of the Florida Statutes
- 3) Construction/Works provided in Section 255.20 of the Florida Statutes; and
- 4) Consultants' Competitive Negotiation Act provided in Section 287.055 of the Florida Statutes

For the procurement of those specified services, the Port will utilize the statutorily mandated competitive solicitation process. To the extent this policy is inconsistent with or contains procedures more restrictive than allowed by law, then the statutes shall control.

Port staff will endeavor to comply with the fundamental premise of fairness through implementation of the procurement policy. Unless otherwise provided by law as cited above, competitive solicitation shall be used for the purchase of goods and services in accordance with the following process:

Competitive Process Threshold Table 2

<b>Competitive Threshold Category</b>	<b>Purchase Dollar Amount (per item)</b>	<b>Process Requirement</b>
Category One	\$0 - \$ 2,500.00	Single Quote or Relevant Pricing Information
Category Two	\$2,500.01-50,000.00	Three Competitive Written Quotes (RFQ)
Category Three	\$50,000.01 or more	Competitive Selection – ITB, ITN, RFP

The above chart represents the minimum procurement process requirements and the Purchasing Official shall have discretion to determine whether a good or service requires a more comprehensive process (i.e. a determination that a particular good or service in Category One or Two requires additional quotes, ITB, or RFP). Nothing in this Procurement Policy should be construed as limiting the Executive Director’s authority to execute multiple Contracts for materials, supplies, and services to one vendor that exceeds \$50,000 cumulatively, so long as the materials, supplies, and services are for separate projects and each project does not exceed \$50,000; however, purchases may not be structured into multiple transactions to fall into a lower Competitive Threshold Category. Purchase Dollar Amount thresholds are measured by project and are based on the Contract amount for the Contract term, or, where no term is specified, on a fiscal year period.

**The submittal of any verbal quote, written quote, response to bid or RFP constitutes an offer by the vendor.**

**2.01 OBTAINING QUOTES**

- a. For purchases of goods or services in Competitive Threshold Category One, the Purchasing Official or department designee shall obtain at least one quote or relevant pricing information. Quotes may be obtained by any employee, but must be forwarded with the Purchase Requisition to the Purchasing Official for review and processing.
- b. For purchases of goods or services in Competitive Threshold Category Two the

Purchasing Official or department designee shall obtain through a request for quotes at least three written quotes. Each written quote should detail the quantity and description of the item to be purchased. Vendors must complete and return the written quote within the designated time period. The Purchasing Official will then review the quotes and obtain any necessary employee input relating to which vendor has submitted the best, responsive, and responsible quote meeting the specifications. Written quotes must have the name of the individual person providing the quote. An email is an acceptable form of a written quote.

- c. All purchase orders will be processed in accordance with Sections 2.02.02 d. to the lowest and/or best, responsive, responsible vendor meeting the specified requirements.
- d. Substitutions - Substitution requires the approval of the Purchasing Official prior to shipment. Any products delivered that do not meet specification, or substitute products shipping without prior approval, will be returned to the vendor at the vendor's expense. When a shipment or product is returned, the vendor must make immediate replacement with acceptable merchandise or the Port may seek all available remedies for default.
- e. Exemptions – See Chapter IV.

## **2.02 COMPETITIVE SELECTION**

The minimum procurement process for acquiring equipment, supplies, or service with a cost in Competitive Threshold Category Three is through invitation to bid (ITB), invitation to negotiate (ITN), request for information (RFI), or the request for proposals (RFP) process.

**2.02.01 Request For Information** - Unless otherwise provided by law, the Port shall publicly advertise an RFI no less than fourteen (14) calendar days prior to the response opening. The request shall include a description of the information sought; the time and date for the submittal of responses; and the date for the Port to review the responses. Responses to these requests are not offers and may not be accepted by the Port in the form of a binding contract. Responses for these requests may be used by the Port in determining its needs with regard to the good or service and in developing ITB, ITN, or RFP related to the purchase of the good or service.

### **2.02.02 Invitation to Bid and Request for Proposal**

- a. Invitation to Bid - Unless otherwise provided by law, the Port shall publicly advertise an invitation to bid no less than fourteen (14) calendar days prior to the bid opening. The invitation to bid shall include a detailed description of the goods or services sought; the time and date for the submittal of sealed bids; the time and date of the public opening of submitted bids; the anticipated date for the Port to award the bid; contractual terms and conditions applicable to the contractual services or goods sought; and the criteria to be used by the Port to determine the award of the bid. The public notice shall also include a reference to the protest provisions set forth in Section 2.02.02 (f).

1. Bid Bond/Performance and Payment (Public Construction) Bond - When bid bonds are required, the bid must be accompanied by a certified check or cashier's check, treasurer's check, or bank draft of any national or state bank (personal or company checks are not acceptable), or bid bond in the amount as specified in the bid documents, but not less than five percent of the amount of the bid.

The bid deposit must be made payable to the Port as evidence of good faith and ensuring that the successful bidder will execute a contract in accordance with the terms, conditions and prices contained in the bid; and further ensuring that the successful bidder will provide a performance bond and payment bond within thirty (30) calendar days from the date of award of the contract, issued by a company qualified as a surety company to do business in the State of Florida. The bond shall extend as a guarantee bond for one year from the date of acceptance of the completed work. Should the successful bidder fail to provide such performance and payment bond within the prescribed time, the bid bond amount submitted with the bid shall be forfeited to the Board as liquidated damages.

Unless otherwise specified in the ITB, bid deposit checks or bonds (if requested) will be returned to the successful bidder following acceptance of a signed contract and receipt of the Public Construction Performance and Payment Bond, if required. Bid deposit check or bonds (if requested) posted by the unsuccessful bidders will be released in accordance with the timeframes provided in the ITB.

Bids received without a bid deposit or with a bid deposit in an amount less than the required will be deemed non-responsive.

All bonds shall be in the form prescribed by laws and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. The surety company must be licensed to do business in the State of Florida, hold a certification authority authorizing it to write surety bonds in this state, have twice the minimum surplus and capital required by the Florida Insurance Code at the time the ITB is issued and be otherwise in compliance with the provisions of the Florida Insurance Code.

Unless otherwise specified in the bid, the surety shall have a least the following minimum ratings:

CONTRACT AMOUNT	BEST'S RATINGS
250,000 to 500,000	Class V B+ or better
500,000 to 2,500,000	Class VI A or better

2,500,000 and over

Class VII A or better

#### RATINGS SCHEDULE

Class V	10,000,000 to	25,000,000
Class VI	25,000,000 to	50,000,000
Class VII	50,000,000 to	100,000,000

A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify the Port and shall, within 20 calendar days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.

2. Bidders Liability - Should any bidder fail to enter into any contract with the Port on the basis of the submitted bid by said bidder, bidder acknowledges that bidder shall be liable to the Port for all costs to re-bid the project as well as the difference between such bid price and the price the Port pays to secure the merchandise from another source. Failure to pay said amount to the Port upon demand shall result in the bidder being debarred and therefore, ineligible to submit Bids, proposals, or quotes to the Port for a period of not less than three (3) years from date of the infraction.
3. Bid Specifications - The preparation of specifications is the responsibility of the department requesting the proposed purchase, with the advice and assistance of the Purchasing Official. Manufacturer's names, trade names, brand information and/or catalog numbers listed in a specification are for information and establishment of quality level desired and are not intended to limit competition unless the bid so stipulates. When the bid allows equal or equivalent products that conform to the required specifications, indicate on the bid form the manufacturer's name, model or catalog number as may be required. Submit with your bid complete descriptive literature and/or specifications as well as a detailed explanation of how the proposed items meet the specification. The Port reserves the right to determine what is equal or equivalent. Bids which do not comply with these requirements are subject to rejection. If the bidder fails to name another equal or equivalent item(s), it will be assumed that the bidder is bidding on, and will be required to furnish, goods identical in every respect to the bid standard. Only one alternate per item number, as close to specifications as possible, will be allowed. If more than one alternate on an item is submitted, the Port will only consider one alternative that it determines is equal or equivalent and the remaining

alternatives will not be considered.

All supplies and equipment offered and furnished must be new and of current production unless the request for product and/or bid specifically authorizes the use of used or recycled items. Remanufactured or reconstructed items are not considered new. In cases where the Port requests bids for new equipment employing trade-ins or used equipment, a trade-in price quotation will be requested for the trade-in and separate price quotation without trade-in for the requested equipment. The Port reserves the right to purchase equipment either with or without trade-in.

All goods called for in the bids or RFPs shall be delivered in good order F.O.B. destination, freight prepaid, inside delivery, within the time specified. Packing list must accompany all shipments.

- b. Request for Proposals - Unless otherwise provided by law, the Port shall publicly advertise an RFP no less than fourteen (14) calendar days prior to the proposal opening. The request shall include a detailed description of the services and/or qualifications sought; the time and date for the submittal of proposals; the date for the Port to select a proposal; all contractual terms and conditions applicable to the contractual services sought; and the criteria, which shall include, but need not be limited to, price, to be used in determining acceptability of the proposal. The public notice shall also include a reference to the protest provisions set forth in Section 2.02.02(f).
- c. Bid//Proposal Specifications
  1. Bid/Proposal Packages - Bid packages or requests for proposal shall be prepared with the appropriate terms and conditions and detailed specifications, including items to be bid, units, and total (or estimated) quantity desired, services required, instructions for bidding, delivery information, and any special requirements for bidding. Where possible, the Port's standard bid or proposal format should be used. Assigned dates and time for pre-bid meetings, if any, and for the public bid opening shall also be included. If the pre-bid conferences are mandatory, a representative from the bidder's firm shall be in attendance or its bid will be rejected. Bids and RFPs shall be publicly opened and read in the presence of one or more witnesses at the time and location designated in the documents. The timing of the release of sealed bids/proposals, as public records, will be in accordance with Chapter 119 of the Florida Statutes.
  2. Bid/Proposal Submissions - A Bid/Proposal must be submitted on the Port's forms, signed by a legal officer of the company, and provide all requested information; otherwise the Bid/Proposal is subject to being rejected.

**FAILURE TO PROPERLY EXECUTE THE OFFICIAL SIGNATURE**



**PAGE OF THE BID/PROPOSAL MAY RESULT IN AUTOMATIC DISQUALIFICATION OF THE BID/PROPOSAL.**

The entire bid/proposal, including cover letter, all instructions, addenda, if any, and actual bid form must be returned intact. Further, all bids/proposals returned must be sealed. Failure to read or comply with the bids or RFPs general information will in no way relieve the bidder(s) from their liabilities arising in the bids/RFPs.

Any questions to an ITB or RFP must be provided in writing in accordance with the ITB or RFP requirements. All written questions shall be answered in writing and provided to all bidders/proposers in the form of addenda. All addenda issued shall be deemed part of the ITB or RFP.

Request to Withdraw Bid/Proposal - A request for withdrawal will be granted if received by the Port in writing at any time before the bid opening.

Electronic Signatures – Electronic signatures will not be accepted, unless otherwise provide for in the solicitation.

- d. Bid/Proposal Selection - The Port may select a bid and/or proposal upon any relevant criteria to the extent the invitation and/or request clearly provide the applicable evaluation criteria and state the relative importance of each. Only qualified, responsive, and responsible bids will be considered for award. If the contract is to be awarded based on price, the contract must be awarded to the lowest priced qualified, responsible, responsive bidder/proposer. This Section does not restrict the right of the Port to reject the low bid of a non-responsible or non-responsive bidder and to award the contract to the next highest ranked qualified and responsive bidder and/or the right of the Port to reject all bids and rebid the project or elect not to proceed with the project. The Port reserves the right to waive minor formalities in any bid/proposal and to accept any bid/proposal which they consider to be in the best interest of the Port. Once the bids and/or proposals are evaluated, the bids, proposals, and recommendations are presented before the Port Authority for review, approval, and award. The Port will provide notice of a decision or intended decision within ten (10) calendar days after bid or proposal opening where the 10-day period does not include the date of the notice or opening. Notice of such decisions or intended decisions will be made by electronically through email to each bidder/proposer and electronic post to the Port's website or other website as designated in the solicitation.
- e. Tie - Unless the ITB or RFP stipulates criteria for determination of an award for tie bids, the criteria below will be used when two or more vendors submit the exact same dollar amount as their bid offer, or if two or more firms are deemed equal with the respect to price, quality and service. In order of importance, the following criteria will be used to break a tie:

- 1) Drug Free Work Place. In accordance with Section 287.087, Florida Statutes, a drug-free workplace shall be given preference. In order to receive preference, a signed certification of compliance must be submitted with the bid response.
  - 2) Local Preference. When prices, quality and other considerations are essentially identical, the bidder/proposer who is engaged in the sale of the goods or services to be procured and which certifies within its bid/proposal that for at least six (6) month prior to the announcement of the solicitation it has maintained a physical place of business in Manatee, DeSoto, Hardee, Hillsborough, Pinellas or Sarasota County with at least one full-time employee at that location, may be given preference. This tie break option cannot be used when federal or state grant funding is anticipated to fund the procurement, in part or wholly.
  - 3) Toss of the Coin.
- f. Bid/RFP Protest Provision - This procedure applies to the resolution of all protests arising from the competitive award procedures set forth above. By submitting a bid/proposal to the Port, bidders acknowledge and agree that this shall be the sole remedy for challenging an award of a procurement and all protests will be handled in accordance with the process set forth in this Section:
- 1) Notice of Protest - Notice of all Port decisions or intended decisions shall be made by electronically through email to each bidder and electronic post to the Port's website or other website as designated in the solicitation. Any person adversely affected by a bid or request for proposal shall file a notice of protest in writing, within two (2) business days from the date on the notice of the decision or actual receipt of the decision, whichever is later. A formal written protest shall be filed within five (5) business days after the protesting party files the notice of protest. No time will be added to the above time limits for mail service.
  - 2) Formal Written Protest - The formal written protest shall state with particularity the facts and law upon which the protest is based. The formal written protest shall be printed or typewritten and contain:
    - a. The name and address of the person or firm filing the protest and an explanation of how they are adversely affected by the Port decision or intended decision;
    - b. Identification of the procurement matter at issue;
    - c. A statement of how and when the notice of Port decision or intended decision was received;
    - d. A statement of all issues of disputed material fact and, if there are none, a statement so indicating;
    - e. A concise statement of the ultimate facts alleged;
    - f. A statement of the applicable law, rule, statute, or other authority upon which the protest is based and which entitle the protestor to relief;
    - g. A specific demand for relief; and

- h. Any other information material to the protest.
- 
- 3) Filing Notices of Protest and Formal Protests - All notices of protest and formal protests shall be filed with the Port's Executive Director. A protest is not timely filed unless both the written notice of protest and the formal protest have been received by the Port within the prescribed time limits. Failure to file a protest within the time prescribed by this Section shall constitute a waiver of all claims and a waiver of proceedings.
  - 4) Stay of Award - Upon receipt of a formal written protest which has been timely filed, the bid solicitation or contract award process shall be stayed until the subject of the protest is resolved by final agency action, unless the Port Executive Director, with the concurrence of the Port Authority, sets forth in writing particular facts and circumstances which require the continuation of the solicitation process or the contract award process without delay in order to protect substantial interest of the Port. Notice that the solicitation process or a contract award has been stayed shall be given by U.S. Mail or hand delivery or courier service or electronically through email and electronic post to the Port's website or other website as designated in the solicitation to all whom submitted qualified bids/proposals. Upon receipt of a timely formal protest of a decision or intended decision to award or reject all bids, qualifications, or proposals, notice shall be given electronically through email and electronic post to the Port's website or other website as designated in the solicitation to all bidders for that contract.
  - 5) Resolution of Formal Protest - Upon the written request of the protestor or on its own initiative, the Port shall provide an opportunity for the protestor to meet with the Executive Director to resolve the protest by mutual agreement within seven (7) business days, excluding holidays, of receipt of a formal written protest. If the subject of a protest is not resolved by mutual agreement within seven (7) business days, excluding holidays, of receipt of the formal written protest, or a mutually agreed upon extension of time, the Executive Director shall certify in writing to the Port Authority that there was no resolution and provide the protestor with a copy of the certification.
  - 6) Quasi-Judicial Hearing - Within seven (7) business days from receipt of written certification that there was no resolution; the protestor may provide a written request that the matter be heard before the Port Authority in a quasi-judicial hearing. Failure to provide a written request to the Port Authority within seven (7) business days of notice shall constitute waiver of any protest. Upon receipt of a written request, the Port Authority may, in its discretion, request a written response from the Executive Director, and/or schedule the matter for hearing before the Port Authority. Within seven (7) business days from the conclusion of the hearing, if one is held, the Port Authority will provide a written final decision on the matter to the protestor.

The protestor may contest the Port decision in a court of competent jurisdiction in Manatee County no later than thirty (30) calendar days after receipt of notice of the Port decision, unless otherwise specified within the controlling request for proposal or qualification documents.

### **2.02.03 Invitation to Negotiate**

- a. As provided by law, for any category of services and/or goods, the Port may choose to purchase the services and goods through an invitation to negotiate pursuant to the provisions below and all relevant laws. The negotiations shall be made based on the “best value,” which includes price, terms and conditions obtainable by the Port to meet its needs. ITN is a similar process to the RFP process. A short list of acceptable proposers is created; however, two negotiation strategies are available: Single or concurrent negotiations.
- b. **Single Negotiation Strategy:** When the single negotiation strategy is used, the Port shall begin negotiations with the top proposer first, and if an agreement is not reached, the Port shall commence negotiations with the other proposers in successive order until an agreement is reached.
- c. **Concurrent Negotiation Strategy:** When the concurrent negotiation strategy is used, the Port shall begin negotiations simultaneously with each of the proposers until an agreement is reached that provides best value to the Port.
- d. **Use:** When the Purchasing Official determines it is in the best interest of the Port to procure a good or service through competitive negotiation, the Purchasing Official shall make a corresponding written recommendation to the appropriate Purchasing Authority. (See Table 1.) The written recommendation must contain the reasons why an ITN would be the best solicitation method used for the purchase, (as opposed to an ITB or RFP), the proposed steps to be followed by the Port in negotiating the contract, and the criteria used in determining the acceptability and selection of the vendor. Upon approval, the Port may contract by negotiation without seeking bids/proposals first. When contracting by negotiation without first seeking competitive sealed bids/proposals for services and/or goods, the following procedures shall apply:
  1. **Public Notice:** The Port shall publicly advertise each instance in which services or goods are being sought and provide a general description of the project/goods. The notice shall indicate how interested parties may apply for consideration and shall indicate the criteria required to be submitted in any responsive letter of interest. The public notice shall also inform all potential respondents that submitting a reply constitutes agreement to: negotiate and abide by the agreement terms and conditions, and if negotiations are successful, to fulfill the obligations of the scope of work or services. Proposers should submit replies with the knowledge that the successful proposal(s) will become subject to the terms, conditions, and obligations outlined in the competitive solicitation, which are subject to negotiation, upon execution of a contract. The public notice must also reference to the bid protest provisions set forth in Section 2.02.02(f).

2. Letter of Interest: Pursuant to the public notice, a firm desiring to provide services for a project shall timely submit a letter of interest containing evidence of current professional status, capabilities, adequacy of personnel, past record and related experience, list of sub-consultants, and other information required by the notice necessary for the Port to evaluate whether the firm is qualified. For contracts for the purchase of goods, each vendor shall provide a price, terms and conditions for the specific commodity/contractual service offered.
3. Competitive Selection: The Purchasing Official or his/her designee or Evaluation Committee, depending on the nature the good/service sought, shall evaluate each letter of interest submitted regarding qualifications and performance ability and may conduct discussions with and may require public presentations by responding firms regarding their qualifications, approach to the project, and ability to furnish the services required pursuant to the terms of the notice. The Purchasing Official or his/her designee or Evaluation Committee shall select and list not less than three firms, in order of preference, deemed to be the most highly qualified to perform the required contractual services and/or provide the required commodity after consideration of the factors set forth in the notice. The Port may select and list less than three vendors only when there are less than three qualified vendors which may offer the services or goods desired by the Port. In determining whether a firm is qualified, the agency shall consider such factors as: ability of professional personnel, certified as MBE, past performance, willingness to meet time and budget requirements, location, recent, current, and projected workloads of the firm; financial soundness of the firm; and the volume of work previously awarded to the firm. The Executive Director or his/her designee shall approve the list selected firms and lead the negotiations. For Competitive Threshold Category Three purchases, the Executive Director or his/her designee will then recommend to the Port Authority that competitive negotiations be instituted with the firms selected. The Port Authority may amend the Executive Director's recommendations.
4. Competitive Negotiation – Concurrent Strategy: Once competitive negotiations are authorized, the firms selected for the short list will continue in the evaluation process, which may involve presentations, site visits, interviews, inspection of the firms' facilities, additional written information, internal staff analysis, feedback from outside consultants, and discussions with the firms about their capabilities and other information deemed helpful to more fully evaluate the vendor. After negotiations have been completed following the initial evaluation, the short listed vendors will be given a deadline for submission of a "best and final offer." The Purchasing Official will review and evaluate the best and final offer, the firms' responses, and information obtained in the evaluation process, and discussion with the firms about their capabilities according to the evaluation criteria contained in the ITN.

5. Competitive Negotiation – Single Negotiation Strategy: Once the competitive negotiations are authorized, the Purchasing Official shall begin contract negotiations for the subject project with the designated firms in order of rank for fair, competitive, and reasonable compensation. Should negotiations with the firm determined to be the most qualified prove unsuccessful after that firm has provided their best and final offer, negotiations with that firm will be formally terminated and negotiations shall begin with the next most qualified firm on the list. Failing accord with the second most qualified firm after that firm has provided their best and final offer; the Port must terminate negotiations with that firm and shall then begin negotiations with the third most qualified firm. If satisfactory agreement is not reached with any of the top three ranked firms, additional responding firms will be ranked and listed in the order of their competence and qualifications. Negotiations will then continue beginning with the first named firm on the second list until an agreement is reached. After successful negotiations, a contract will be entered or, for Competitive Threshold Category Three purchases, a recommendation shall be made that the Port Authority award the contract. The Port will maintain an accurate record of the discussions held with each vendor/bidder/proposer.
- e. Negotiation Impasse: If negotiations have reached an impasse with all firms invited to negotiate, the Port has the option to reject all offers and cancel the ITN, to reject all offers and reissue the ITN, or to use some other procurement method.
- f. Notice of Intent: No contract shall be signed or transaction authorized for any purchase pursuant to an ITN until the selection has been announced and the time for filing a protest has run. The Purchasing Official is responsible for preparing a notice of intent to award a contract, as modified in negotiations of the ITN, to the firm(s) who provide the best value to Port. This notice of intent is electronically posted on the Port's website and physically in a designated public area of the Port.
- g. Award: The Executive Director or his/her designee may award a contract for Competitive Threshold Category One and Two purchases. The Port Authority may award a contract for Competitive Threshold Category Three purchases. The contract for a firm selected through an ITN must contain an intent to award that explains the basis for the selection of the firm and that sets forth the firm's deliverables and compensation terms, pursuant to the contract, along with an explanation of how these terms provide the best value to the Port.
- h. Public Record: Offers are subject to disclosure thirty (30) calendar days after the opening or if a notice of intent to award is made earlier than this time as provided by Florida Statute 119.071. In the event all offers are rejected and notice of intent to reissue the ITN is provided, the recording and all records presented at the exempted meeting remain exempt until notice of an intended decision concerning the reissued ITN or withdrawal of the reissued ITN, not to exceed twelve (12) months after the initial notice rejecting all offers.

- b. The Audit Committee establish factors to be used for the evaluation of audit services to be provided by a certified public accounting firm duly licenses and qualified. Such factors shall include, but are not limited to, ability of personnel, experience, ability to furnish the required services, and other factors determined by the Audit Committee to be applicable.
- c. Public announcement of a RFP. See Section 2.02.02 for more information on RFPs.
- d. Evaluate proposals based on evaluation factors, but not compensation only.
- e. Rank and recommend in order of preference no fewer than three firms deemed to be the most highly qualified. If less than three firms respond to the RFP, then the Audit Committee shall recommend the most highly qualified.
- f. The Port Authority shall inquire of the qualified firms as to the basis of compensation, select one of the recommended firms, and negotiate a contract using one of t wo methods:
  - 1. If compensation is not one of the established factors for evaluation, then the Port Authority, or its designee, shall negotiate a contract with the firm ranked first. If unable to successfully negotiate a contract with the first ranked firm, the Port Authority, or its designee, shall negotiate with the second ranked firm. If unable to successfully negotiate a contract with the second ranked firm, then the Port Authority, shall negotiate with the third ranked firm. In negotiating with the firms, the Port Authority may reopen formal negotiations with any one of the top three ranked firms, buy may not negotiate with more than one firm at a time. If the Port Authority, or its designee, is unable to negotiate a satisfactory contract with any recommended firms, the Audit Committee shall recommend additional firms and negotiations will continue.
  - 2. If compensation is not one of the established factors for evaluation and not used in evaluations, the Port Authority shall select the highest ranked, qualified firm or must document the reason for not selecting the highest ranked firm.
- g. The Port Authority may select a firm recommended by the Audit Committee and negotiate a contract using an alternative negotiation method for which compensation is not the sole or predominant evaluation factor used to select the firm.
- h. The written contact for auditor services must contain the following:
  - 1. A provision specifying the services to be provided and fees or other compensation for such services;
  - 2. A provision requiring that invoices for fees or other compensation be submitted with sufficient detail to demonstrate compliance with the terms of

qualified firm or must document the reason for not selecting the highest ranked firm.

- g. The Port Authority may select a firm recommended by the Audit Committee and negotiate a contract using an alternative negotiation method for which compensation is not the sole or predominant evaluation factor used to select the firm.
- h. The written contract for auditor services must contain the following:
  - 1. A provision specifying the services to be provided and fees or other compensation for such services;
  - 2. A provision requiring that invoices for fees or other compensation be submitted with sufficient detail to demonstrate compliance with the terms of the contract;
  - 3. A provision specifying the contact period, including renewals, and conditions under which the contract may be terminated or renewed. Renewals must be in writing. An engagement letter signed by both parties shall constitute a written contract.

### **3.02 CERTAIN INVESTMENT PURCHASES**

Section 218.415 of the Florida Statutes, as may be amended from time to time, specifies a competitive selection process that must be used related to the Port's purchase of securities based on the investment policy.

### **3.03 PUBLIC CONSTRUCTION/WORKS**

Chapter 255 of the Florida Statutes, as may be amended from time to time, provides general requirements and limitations related to public property and publicly owned buildings. Specifically, Section 255.20 of the Florida Statutes mandates public construction projects in excess of \$300,000 and electrical work in excess of \$25,000 be competitively awarded based on the submission of sealed bids or proposals submitted in response to a Request for Proposal or submitted for competitive negotiation. See Chapter II of this Procurement Policy.

Section 255.20(c) of the Florida Statutes, as amended from time to time, provides exemptions to this statutorily mandated process, which includes:

- 1. When a project is undertaken to repair, reconstruct or replace an existing facility, destroyed or damaged by an act of God, riot, fire, flood, accident, or other urgent circumstance and such damage or destruction creates an immediate danger to the public health or safety; loss to public or private property which requires emergency government action; or an interruption of an essential government service.



2. After proper public notice, the Port does not receive any responsive bids or proposals.
3. Projects undertaken as a repair or maintenance to an existing public facility in accordance with Section 255.20 of the Florida Statutes.
4. If the funding source of the project will be diminished or lost because the time required to competitively award the project after the funds become available exceeds the time within which the funding source must be spent.
5. If the Port competitively awarded a project to a private sector contractor and the contractor abandoned the project before completion or the local government terminated the contract.
6. If the Port Authority publicly notices an Authority meeting in accordance with Section 255.20 of the Florida Statutes, conducts the public Port Authority meeting and finds by majority vote that it is in the public's best interest to perform the project using its own services, employees, and equipment.
7. If, pursuant to Section 255.20 of the Florida Statutes, at least 4 of the Port Authority members vote to find it in the Port best interest to award the project to an appropriately licensed private sector contractor, based on specific substantive criteria and procedures.
8. The project is subject of Chapter 336 of the Florida Statutes, County Road System.

Additionally, any public construction project projected to cost more than \$200,000 must be publicly advertised in a newspaper in accordance with Section 255.0525, Florida Statutes, as amended from time to time. The advertisement must occur at least twenty-one (21) calendar days prior to the bid opening and five (5) calendar days prior to any pre-bid conference. Any public construction project projected to cost more than \$500,000 must be publicly advertised in a newspaper in accordance with Section 255.0525, Florida Statutes, as amended from time to time. The advertisement must occur at least thirty (30) calendar days prior to the bid opening and five (5) calendar days prior to any pre-bid conference.

### **3.04 CCNA**

Section 287.055 of the Florida Statutes, as may be amended from time to time, provides a competitive selection and negotiation process that must be used in obtaining architectural, professional engineering, landscape architecture, or registered surveying and mapping services (collectively, "Professional Services") for a project that has construction costs in excess of \$325,000, or for a planning or study activity that exceeds \$35,000, except in cases of emergency.

Contingent fee agreements are prohibited. Further, each contract must contain the following clause:

"The architect (or registered surveyor and mapper or professional engineer, as

applicable) warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) to solicit or secure this agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement.”

Any breach of that provisions may result in termination of the contract.

A continuing contract for professional services is permitted only where:

- a. The firm is providing professional services for projects where the estimated construction costs of each individual project does not exceed \$4M;
- b. For study activities if the fee for professional services for each individual study does not exceed \$500,000; or,
- c. For work of a specified nature as outlined in the contract, so long as the contract is for a fixed term or with no true limit except the contract provides a termination clause.

### **3.04.01 QUALIFIED BASED SELECTION AND NEGOTIATIONS**

As provided in Section 287.055 of the Florida Statutes, the statutorily mandated process requires the agency to competitively select highly qualified firms and then to competitively negotiate with the most qualified firm. Among the factors in determining qualifications are the capabilities, adequacy of personnel; past record; experience of the firm or individual; whether the firm is a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and the volume of work previously awarded to each firm by the Port; and other factors determined by the agency to be applicable to its particular requirements. In making its determination, the Evaluation Committee, consisting of at least three but not more than seven members, shall interview no less than three (3) firms to determine their relative ability to meet the time and budget requirements and identify and establish the relative merits of each firm's approach to managing and scheduling the project. The Evaluation Committee shall provide a recommendation to the Port Authority and the Port Authority shall authorize negotiations by the Purchasing Official with the most qualified firm. The Port Authority shall select no less than three (3) and no more than six (6) firms deemed to be the most highly qualified to perform the required services after considering the factors listed above.

Negotiation is restricted to single negotiation strategy. The Port shall negotiate a contract with the most qualified firm for professional services at compensation which the Port determines is fair, competitive, and reasonable. Should the Port be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the agency determines to be fair,

competitive, and reasonable, negotiations with that firm must be formally terminated. The Port shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Port must terminate negotiations. The Port shall then undertake negotiations with the third most qualified firm. Should the Port be unable to negotiate a satisfactory contract with any of the selected firms, the Port shall select additional firms in the order of their competence and qualification and continue negotiations in accordance with this subsection until an agreement is reached. The award of the negotiated contract shall be approved by the Port Authority.

### **3.04.02 DESIGN-BUILD CONTRACTS**

As provided in Section 287.055 of the Florida Statutes, consulting and construction services for public construction projects may be undertaken utilizing a design-build contract method in accordance with this policy. Design-build contracts must establish a guaranteed maximum price (which shall include reasonable costs plus a fixed lump sum fees for design, project management, overhead, and profit) and guaranteed completion date. The Port Authority shall award design-build contracts by either the use of a qualifications-based selection process as described above in Section 3.04.01 or the use of a competitive proposal selection described below. If using a qualifications-based selection process, then during the selection of the design-build-firm the Port Authority shall employ a licensed design professional appropriate for the project to serve as the Port's representative.

#### **03.04.02.01 Competitive Proposal Selection.**

- 1) Design Criteria Package. The Port Authority may cause a design criteria professional to prepare a design criteria package for the design and construction of any project. The design criteria professional who prepares the design criteria package shall not be eligible to render any services under any design-build contract executed pursuant to the design criteria package except for assisting the Port Authority in the selection of the firm, the negotiation for and the preparation of the design-build contract, the administration of the design-build contract and the inspection of the project. The Port Authority shall consult with the design criteria professional concerning the evaluation of the responses or bids submitted by the design-build firm, the supervision approval by the Port Authority of the detailed working drawings of the project, and the evaluation of the compliance of the project's construction with the design criteria package created by the design criteria professional.
- 2) Qualifications. The Port Authority may qualify and select firms as being qualified to design and build projects based upon the qualifications, availability and past work of the firms for the Port Authority, including those of the members, partners or principals of the particular firm. The Port Authority may, in its sole discretion, pre-qualify and select no fewer than three (3) firms for anticipated or possible future projects or, in the alternative, may qualify and select no fewer than three (3) firms in

connection with any particular project as part of the process whereby a request for proposals is advertised and distributed for a particular project.

- a) Pre-qualification requires that each potential proposer will be pre-qualified by the Port Authority to participate in the process for a specific area(s) of construction based on the proposer's area of license(s) or certification(s). In order to be eligible to submit a proposal for a design-build project, the potential bidder must provide the Port Authority evidence of the following qualifications:
  - i. Current state contractor's license, certification or registration as required in the Florida Statutes.
  - ii. Current corporate charter registration. If the bidder is a domestic (Florida) corporation or authority to transact business in the state if the potential bidder is a foreign (non-Florida) corporation as may be required by Florida law.
  - iii. For projects that require a contract for a specific experience and expertise, the Port Authority may state additional pre-qualification requirements related to demonstrating a performance of similar work of a similar size and complexity and the possession or availability of facilities or equipment needed for the performance of work.
  
- b) Each instance where the proposal documents set forth certain additional pre-qualification requirements, each potential proposer shall submit the pre-qualification data to the Port Authority as provided in the proposal documents. Each potential bidder will be notified by the Purchasing Official regarding its eligibility or ineligibility to submit bids for a specific field or area of construction. Pre-qualification may be used for any design-build project.
  
- 3) Competitive Proposal – RFP Distribution. The RFP for a design-build contract for any particular project shall be advertised in accordance with Section 2.02.02(b) of this policy and shall be distributed to all architects, landscape architects, engineers and firms who are presently prequalified by the Port Authority as being qualified to render architectural, landscape architectural, engineering services or design-build construction services for the Port Authority, together with any other individual or entity requesting a copy of the request for proposals. A RFP shall be prepared in connection with and referring to the design criteria package for any particular project authorized by the Port Authority setting forth the manner in which firms may submit proposals to design the particular project and build or construct the project pursuant to a design-build contract. The RFP shall also set for the contents of any proposals, the time within which the proposal shall be submitted and the procedure which will be followed for the evaluation of all submitted proposals, together with the manner in which the Port Authority may select one or more proposals for the design and building of the particular project. A RFP may also include such other conditions and information as may be

appropriate under the circumstances for the particular project.

- 4) Competitive Proposal Selection. The solicitation of competitive proposals, pursuant to the design criteria package, from those qualified design-build firms and the evaluation of responses or bids submitted by those firms shall be based on the evaluation criteria and procedures established prior to the solicitation of the competitive proposals. The design criteria professional shall evaluate all proposals properly and timely submitted in response to any RFP based on price, technical and design aspects for the particular project rated for that project. The evaluation shall include rating the proposals on the experience of the firms, the time estimated by the firm for completion of the particular project, the manner in which the project is to be designed and build, the total cost of the design-build contract and other relevant factors. The submitted proposals shall be rated numerically in order of preference, and a summary of each proposal shall be presented at a meeting of the Port Authority for the election of the firm with which the Port Authority may enter into a design-build contract for the particular project.
- 5) Design-Build Contract. Upon the approval by the Port Authority of any particular proposal or proposals for a design-build contract for any project, the selected firm or firms shall enter into a written design-build contract with the Port Authority incorporating the design criteria package, the request for proposals, the particular proposal or proposals submitted by the particular firm or firms and such other provisions as may be appropriate under the particular circumstance.
- 6) Emergency Projects. In the event of an emergency, the Port Authority may enter into a design-build contract for any particular project with the best qualified firm available to the Port Authority at that time, without the necessity of pre-qualifying or qualifying the firm, advertising or distributing a request for proposals and other related provisions of these procedures. The design criteria package for any project necessitated by any such emergency need not meet all the criteria hereinabove set forth normally for design criteria packages.

### **3.05 CHANGES IN THE LAW**

In the event Sections 218.391, 218.415, 255.20, and/or 287.055 of the Florida Statutes are amended such that this section becomes inconsistent with or contains procedures more restrictive than allowed by law, then the statutes shall control.

## **CHAPTER IV - TRANSACTIONS EXEMPT FROM COMPETITIVE PROCUREMENT**

#### **4.01. EXEMPTIONS.**

An exemption may be granted by the Purchasing Official for goods or services when it is in the Port best interest and allowed by law.

- a. Typical exemptions include, but are not limited to, the following:
  1. Real Property Acquisition, such as land, easements, rights-of-way, existing buildings, structures, or improvements, resulting from negotiations and approved by the Port Authority.
  2. Court-ordered fines and judgments, resulting from litigation.
  3. Exceptional disbursements as authorized by the Port Authority.
  4. Court-ordered fees, resulting from the judicial process, processed by the Clerk of the Court, and charged against the appropriate budget for such fees.
  5. Cash transfers and investment transactions for fiscal management purposes, processed through the Clerk of Circuit Court's Finance Department, and disbursed from general ledger accounts by the Clerk of the Circuit Court.
  6. Accrued or current liabilities already disbursed from the budget, processed through the Clerk of Circuit Court's Finance Department, and paid from or through general ledger accounts by the Clerk of the Circuit Court.
  7. Financial Instruments: Professional services required for issuance of debt, debt service and investments.
  8. Debt service payments processed by the Clerk of the Circuit Court Finance Department and charged against budgetary accounts.
  9. Refunds of current or prior year revenues charged against budgetary accounts.
  10. Grant disbursements to federal, state, or local government agencies, or to private groups or agencies.
  11. Insurance including but not limited to liability, property, medical, and workers compensation insurance or payments from any loss fund established for such purpose.
  12. Part-time and temporary labor and employees; personnel services, recruitment services. Security services by off-duty law enforcement personnel.
  13. Office, warehouse space, boat slip, submerged land, or other property rental or lease.
  14. Railroad leases and associated costs and fees.
  15. Utilities, toll charges, gas, postage, shipping and express mail costs.
  16. Dues and memberships in trade or professional organizations.
  17. Subscriptions for periodicals, advertisements, copyrighted material.
  18. Warranty or maintenance agreement costs required by the original manufacturer or installer
  19. Maintenance of vehicles and equipment; when considered to be in the best interest of the Port and the services are to be performed by the vehicle or equipment manufacturer, manufacturer's service representative, a distributor of the manufacturer's equipment or when at least three (3) responsible services have been evaluated the services may be procured without bid.
  20. Computer maintenance and/or software licenses for existing software.
  21. Credit card processing fees.
  22. Health services and prevention services related to mental health.

23. Job-related travel pursuant to Chapter 112, of the Florida Statutes.
24. Seminars, tuition, registration and training.
25. Art work, maps, and design services.
26. Entertainment services for Port sponsored events.
27. Title insurance, title commitments, title searches, and ownership and encumbrance searches and real estate appraisal services to determine the market value of real property.
28. Legal services, expert witnesses, court reporter services, and all other related expenses of claims and/or litigation.
29. Consultant Services, as defined in Section 2, unless otherwise provided by law. For example, services covered by Sections 287.055 (CCNA) and 218.391 (Auditor Selection) would not be exempt from Competitive Solicitation. Anytime this exemption is utilized, a justification as to why consultant services should not or cannot be competitively solicited shall be provided to the Purchasing Official for approval prior to entering into a contract for the service. The Purchasing Official will determine, on an individual basis, whether the exemption is applicable.
30. Political lobbying services.
31. Services or commodities provided by government entities, such as transactions by Interlocal Agreement, permitting fees.
32. Purchases under Tax Savings Program.
33. Sole source items in accordance with Section 4.01 c. 1, below.
34. Purchases which “piggy-back” on existing government contracts in accordance with Section 4.01 c. 2., below.
35. Emergency purchases as noted in Chapter 5.
36. Used goods.
37. Goods procured from an auction in accordance with Section 10.03.
38. Multiple quantities of a single item of common operational supplies.

b. The Port may grant exemptions for Public Construction projects in accordance with Section 255.20 of the Florida Statutes, including:

c. The Port has the following policies related to certain enumerated exemptions:

1. Sole Source:

- (a) If the Purchasing Official determines that a service and/or good is available from a single source and the total cost is within Competitive Threshold Category One or Two, then the purchase may be excepted from competitive solicitation requirements, in writing, upon filing a written statement stating the conditions and circumstances requiring the purchase and filing the written statement in Accounting.
- (b) If the Purchasing Official determines that a service and/or good is available from a single source and the total cost is within Competitive Threshold Category Three, the purchase may be excepted from competitive solicitation requirements by the Port Authority, in writing, upon the filing of a certification by the Purchasing Official stating the conditions and circumstances requiring the purchase. This certification shall set forth the purpose and need of the

purchase and explain why the single source is the only one that will produce the desired results. The Port intended decision shall be presented to the Port Authority on the consent agenda at the next regularly scheduled public meeting.

(c) Examples of appropriate basis for determination of sole source or noncompetitive purchase includes:

- (1) The good or service is wanted for experimental trials, pilots, and/or testing.
- (2) The good is a component, repair, or replacement part of existing equipment for which no commercially available substitute exists and the purchase can be made only from the manufacturer or sole distributor.
- (3) The compatibility of equipment, accessories or replacement parts is of paramount importance.
- (4) Additional, unanticipated goods or services are needed to complete an ongoing task.
- (5) Delivery date is a factor and only one vendor can meet the time constraints.
- (6) The good is being purchased for resale.
- (7) The good is being purchased from or sold to another government entity.
- (8) The source of service is a monopoly (such as a utility or transport provider).
- (9) Grant funds are available and must be used in a time frame that does not allow for competitive bidding.
- (10) The likely, nonspeculative cost of competitive purchasing would exceed any potential savings and benefit to the Port.

(d) In any case, where the Port seeks to purchase from a sole source, materials for the construction, modification, alteration, or repair of any Port-owned facility, the Port Authority must first make the written findings required by Section 255.04 of the Florida Statutes.

2. Cooperative Procurement (“Piggy-backing”) – Pursuant to Section 189.053 of the Florida Statutes the Port may purchase services or goods other than professional services governed by Section 287.055 of the Florida Statutes, from the purchasing agreements of other special districts, municipalities, or counties which have been procured pursuant to competitive bid, requests for proposals, competitive selection, or competitive negotiation, and which are otherwise in compliance with Florida Statutes and this Procurement Policy. Piggybacking is permissible when another government agency’s procurement documents allow for cooperative procurement or the agency and the vendor/contractor agrees to allow cooperative procurement in writing, and if such purchases are to the economic advantage or in the best interest of the Port and are otherwise in compliance with Florida law and this Procurement Policy.
3. Cooperative Purchasing – The Port may participate in, sponsor, conduct, and/or administer a cooperative purchasing program (e.g., GSA Advantage, State of Florida Contracts, Southeast Florida Governmental Purchasing Co-Operative Group, Florida



Sheriff's Association, and National Joint Powers Alliance).

4. Online Marketplaces (e.g., Amazon.com, govdeals.com, ebay.com) – The Port may purchase Competitive Threshold Category One or Two goods and/or services, other than those with a statutory specified process, from Online Marketplaces, if such purchase is deemed to be in the best interest of the Port. For Competitive Threshold Category Two purchases from an Online Marketplace documentation must be kept demonstrating the best option from the Online Marketplace purchase was purchased.
5. Standardization – Standardization of products may occur when a process has been completed based on defining and applying uniform specifications such as quality, design, and performance. [The standardization process is to be conducted by the using department, in conjunction with the Purchasing Official.] The Purchasing Official will maintain documentation of the process, including details to support the standardization designation. The Port Authority must approve the standardization designation and add the product to the list of approved standardized products included within “Construction Standards and Technical Specifications,” which is maintained on the Port’s website. Thereafter, the Purchasing Official may negotiate purchase of standardization products on a sole source basis. Periodic reviews of the standardization designations should be completed by the using department to ensure standardization requirements are being met and are still in effect. Said reviews should be completed at a minimum of every four years and documentation shall be maintained by the Purchasing Official to show compliance. Levels of purchasing authority shall be followed to procure standardized products. The Port Authority must approve any changes to the list of standardized products.

#### **4.02 WAIVER OF PROCUREMENT PROCEDURES.**

The Port Authority may authorize the waiver of procurement procedures upon the recommendation of the Port’s Executive Director when it is in the Port’s best interest to do so to obtain goods and services that cannot be acquired through the normal purchasing process due to insufficient time, the nature of the goods or services, or other factors and it is not otherwise prohibited by law. Purchases authorized by this waiver process will be acquired after conducting a good faith review of available sources and negotiations as to price, delivery, and terms.

### **CHAPTER V - EMERGENCY PURCHASES OF SERVICES OR GOODS**

Notwithstanding any other provision of this policy, emergency purchases of goods or services may be made in the event of a disruption of essential operations, or where there exists a threat to public health, welfare, safety, or when the protection or preservation of public property would not be possible through normal procurement procedures. To the extent practical under the circumstances, such emergency purchases shall be made using competent and qualified firms and include a competitive selection process.

The Purchasing Official shall complete an Emergency Purchase Form certifying the conditions and circumstances requiring an emergency purchase of goods/services. Statements shall be

submitted within thirty (30) calendar days after the date of contract and shall include complete details surrounding the event(s) which created the emergency. A copy of the contract shall accompany the statement. In the event of an Emergency Purchase of goods/services in excess of the threshold amount for Competitive Threshold Category Three for goods/services a copy of the report and contract shall be placed on the next scheduled meeting of the Port Authority for ratification of the Executive Director's action and inclusion in the minutes.

## **CHAPTER VI - RESTRICTIONS ON PURCHASES**

### **6.01 CONVICTED VENDOR LIST**

Pursuant to section 287.133, Florida Statutes, as may be amended from time to time, any person or affiliate who has been placed on the convicted vendor's list following a conviction for a public entity crime:

- (a) May not submit a bid or proposal on a contract to provide any goods or services to a public entity.
- (b) May not submit a bid or proposal on a contract with a public entity for the construction or repair of a public building or public work.
- (c) May not submit bids or proposal on leases of real property to a public entity.
- (d) May not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and
- (e) May not transact business with any public entity in excess of the threshold amount provided in category two of Section 287.017 of the Florida Statutes.

Further, the Port may not accept any bid or proposal or award any contract or transact business with any person placed on the convicted vendors list for a period of thirty-six (36) months following placement on the convicted vendors list, unless otherwise provided by law.

### **6.02 BRIBERY**

No person or business entity shall be awarded a contract by the Port for the provision of goods or services, if that person or business entity:

- (a) Has been convicted of bribery or attempting to bribe a public officer or employee of the Port, State of Florida, or any other public entity, in that officer's or employee's official capacity;
- (b) Has been convicted of a conspiracy or collusion among prospective vendors in restraint of freedom of competition, by agreement to offer a fixed price, or otherwise;
- (c) Has made an admission of guilt of such conduct described in subsection a and b above, which is a matter of record, but has not been prosecuted for such conduct, or has made an admission of guilt of such conduct, which is a matter of record pursuant to formal prosecution; or
- (d) Notwithstanding the above, a person, business entity, or officer or employee of a business entity, having been convicted of one or more of the crimes set

forth above or having made an admission of guilt as set forth above shall be ineligible for the awarding of a contract by the Port for a period of five (5) years following such conviction or admission.

### **6.03 SCRUTINIZED ENTITIES**

Pursuant to Section 287.135, Florida Statutes, as amended from time to time, a company may not bid or submit a proposal to enter into a contract if the company is on the Scrutinized Companies that Boycott Israel List or engage in a boycott of Israel. For contracts of one million dollars or more, a company may not bid or submit a proposal to enter into a contract if the company is on the Scrutinized Companies with Activities in Sudan List or Scrutinized Companies with Activities in Iran Petroleum Energy Sector List or engaged in business operations in Cuba or in Syria. In response to any bid or proposal, the vendor must certified the above.

For contracts of one million dollars or more, the following clause, or one substantially similar, must be included in the contract:

By executing this contract and each and every renewal (if renewal is separately provided for herein), pursuant to section 287.135, Florida Statutes, Contractor certifies, represents, and warrants that: (a) it is not on the Scrutinized Companies with Activities in Sudan List, (b) it is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, (c) that it does not have business operations in Cuba or Syria, and (d) that it is not participating in a boycott of Israel, and that all such certifications were true at the time it submitted its bid or proposal for this Agreement and as of the effective date of any renewal. Notwithstanding anything contained in this Agreement to the contrary, the Port may terminate this Agreement immediately if: (1) Contractor is found to have submitted a false certification regarding (a) – (d) above in accordance with section 287.135(5), Florida Statutes, or (2) Contractor is found to have been placed on the Scrutinized Companies that Boycott Israel List as that term is defined and such list is maintained pursuant to Section 287.135, Florida Statutes, or is otherwise engaged in a boycott of Israel. Such termination shall be in addition to any and all remedies available to the Port at law.

### **6.04 AFFILIATES**

Any business entity controlled by or affiliated with any person or business entity ineligible for the award of a contract may also be prohibited from contracting with the Port if the relationship or affiliation is such that in the reasonable opinion of the Purchasing Official, the person or business entity, by reason of the relationship to the ineligible person or entity, is likely not to conduct business in a responsible or lawful manner, or if the ineligible person or business entity could directly benefit from the contract.

## **CHAPTER VII - TAX SAVINGS PROGRAM**

### **7.01. TAX SAVINGS PROGRAM**

Pursuant to the contract, the Port may authorize use of the tax savings program. The Tax Saving Program operates to limit the Florida Sales Tax upon a project and pursuant to Florida Statutes, and particularly Rule 12 A-7.094 (3), Florida Administrative Code. Tax Saving Program purchases must follow this procedure to be exempt from competitive procurement.

- a. The Port shall issue a Certificate of Entitlement to the Contractor certifying: (1) that the materials and supplies purchased will become part of a public facility; and (2) that the Port will be liable for any tax, penalty or interest due should the Department of Revenue later determine that items purchased do not qualify for exemption.
- b. The Contractor shall provide the Port a requisition form to be utilized for purchase of those supplies, materials and equipment (SME) described in the contract. Port reserves the right to, at any time during the term of the project, add to, delete from or modify the description of supplies, materials and equipment described in the contract, at Port sole discretion.
- c. Requisition forms will only be issued for the SME described in the contract. Such forms shall be prepared and submitted by the Contractor to the Port. Such form shall be submitted in sufficient time for review and consideration by Port so that the materials may be acquired directly by Port and delivered to the project site in sufficient time to assure its availability at the time that it is needed and so as not to delay progress of the project. It shall be the responsibility of Contractor to assure that such requisition forms are submitted to Port representative for approval by Port with sufficient time for the Port review and processing, such that no delay shall impact the need for or order of the item. It shall be the responsibility of Contractor to assure the subcontractors, sub-subcontractors, specialty contractors and others have the materials sought to be requisitioned on hand at the time required for installation in accordance with the project schedule.
- d. The Port will issue Purchase Orders to the appropriate vendors as designated and shown upon requisition forms. A copy of the Purchase Order will be returned to the Contractor.
- e. Upon receipt of an invoice for the items and documentation that the items have been delivered to the site and accepted by the Contractor, the Contractor will write on the face of the invoice that it is "okay for payment," sign and date the invoice. The delivery ticket must be attached to the invoice to the Port, to be forwarded through the Contractor.
- f. Invoices addressed to the Port shall be submitted by the Contractor to the Port in a timely manner so as to allow Port to take advantage of any applicable discounts. Payment of invoices for materials purchased as described in this procedure shall be

issued by the Port directly to the vendor to whom the Purchase Order was issued.

- g. Contractor shall prepare a complete list of instructions in accordance with this Section, to be distributed to all applicable subcontractors with the procedures to be followed under the Sales Tax Savings Procedures.
- h. Materials, supplies, and equipment acquired using this procedure shall be subject to the warranty provisions as required by the Contract between the Contractor and the Port. Contractor acknowledges that Port will be ordering materials for said project pursuant to the ability to benefit from the tax savings provisions. Contractor further agrees that it shall be responsible for acceptance of delivery, storage, and installation of said products ordered by Port. Further, Contractor shall be liable for all loss or damage to said products subsequent to delivery of same from the vendors/suppliers.
- i. The Contractor shall be responsible for any defects, storage, delivery, and installation as set forth in the contract for any and all materials, products, and systems purchased by the Port purchase orders. The Contractor shall maintain as a part of the required Builders' Risk Insurance, or other insurances being provided, full replacement coverage for all items purchased by the Port under this Sales Tax Savings Procedure.

The foregoing procedure is for the purpose of limiting Florida Sales Tax upon the project pursuant to Florida Statutes and particularly Rule 12 A-7.094(3), Florida Administrative Code. Provisions hereof and procedures shall be construed in order to carry out the intent of the parties. Provisions hereof and procedures established hereby may be amended by Port at any time, upon any indication that such change, amendment or alteration is necessary to assure non-taxable sales tax treatment of the project.

## **CHAPTER VIII - PUBLIC PRIVATE PARTNERSHIPS**

### **8.01. PURPOSE**

In accordance with Section 255.065 of the Florida Statutes, the Port Authority recognizes the public need for timely, cost-effective acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation or installation of projects serving a public purpose, and that public-private partnerships can meet the public needs by improving the schedule for delivery, lowering costs, and promoting other benefits to the public.

### **8.02. ACCEPTANCE AND SOLICITATION OF PROPOSALS**

In accordance with Sections 255.065 and 311.091 of the Florida Statutes, the Port may receive unsolicited proposals or may solicit proposals for qualifying projects and may thereafter enter into an agreement with a private entity, or a consortium of private entities, for the building, upgrading, operating, ownership, or financing of facilities. Proposers submitting unsolicited proposals shall submit an electronic copy the proposal to the office of the Purchasing Official.

### **8.03 FINDINGS REQUIRED**

Prior to entering a contract, the Port Authority must determine that the proposed project.

- a. Is in the public's best interest.
- b. Is for a facility that is owned by the responsible public entity or for a facility for which ownership will be conveyed to the responsible public entity.
- c. Have adequate safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the contract by the responsible public entity.
- d. Have adequate safeguards in place to ensure that the responsible public entity or private entity has the opportunity to add capacity to the proposed project or other facilities serving similar predominantly public purposes.
- e. Will be owned by the responsible public entity upon completion or termination of the contract and upon payment of the amounts financed.

### **8.04. FINANCE PLAN.**

Prior to entering a contract, the Port shall consider a reasonable finance plan that is consistent with Section 255.065(9) of the Florida Statutes; the project cost; revenues by source; available financing; major assumptions; internal rate of return on private investments, if governmental funds are assumed in order to deliver a cost-feasible project; and a total cash-flow analysis beginning with the implementation of the project and extending for the term of the contract.

### **8.05. PROJECT APPROVAL REQUIREMENTS.**

An unsolicited proposal from a private entity for approval of a qualifying project must, unless waived by the Purchasing Official, be accompanied by the following material and information:

- a. A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.
- b. A description of the method by which the private entity proposes to secure the necessary property interests that are required for the qualifying project.
- c. A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and the identity of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.
- d. The name and address of a person who may be contacted for additional

information concerning the proposal.

- e. The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology for and circumstances that would allow changes to the user fees, lease payments, and other service payments over time.
- f. Additional material or information that the Port reasonably requests.

In addition to the foregoing, in considering an unsolicited proposal, the Port may, in relevant cases, require the private entity to submit a technical study prepared by a nationally recognized expert with experience in preparing analysis for bond rating agencies. In evaluating the technical study, the Port may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of external advisors or consultants who have relevant experience.

#### **8.06. PROJECT QUALIFICATION AND PROCESS.**

The private entity must meet the minimum standards contained in the Port's guidelines for qualifying professional services and contracts for traditional procurement projects.

#### **8.07. INDEPENDENT ANALYSIS.**

Pursuant to Section 255.065 of the Florida Statutes, once an unsolicited proposal is received and prior to the award of a contract, the Port staff, aided by any required third party professionals, shall perform and deliver to the Executive Director an independent analysis of a proposed public-private partnership which examines its cost-effectiveness and overall public benefit. This analysis will normally be performed before the procurement process is initiated.

#### **8.08. APPROVAL.**

The Port may approve the development or operation of a qualifying project, or the design or equipping of a qualifying project, if:

- a. There is a public need for or benefit derived from a project of the type that the private entity proposes as the qualifying project.
- b. The estimated cost of the qualifying project is reasonable in relation to similar facilities.
- c. The private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.

#### **8.09. NOTICE TO AFFECTED LOCAL JURISDICTIONS.**

Pursuant to Section 255.065 of the Florida Statutes, the Port shall furnish a copy of the proposal to each affected local jurisdiction when considering a proposal for a qualifying project, and shall consider any written comments provided concerning whether the facility is compatible with the local comprehensive plan, the local infrastructure development plan, the capital improvements budget, any development of regional impact processes or timelines, or other governmental spending plan.

#### **8.10. FINAL AGREEMENTS TO COMPLY WITH LAW.**

Any final agreement negotiated between a private entity and the Port shall, at a minimum, comply with the requirements of Section 255.065 of the Florida Statutes.

#### **8.11. CHANGES IN LAW.**

In the event Sections 255.065 and 311.091 of the Florida Statutes are amended such that this Section becomes inconsistent with, or contains procedures more restrictive than allowed by law, then the statutes shall control.

### **CHAPTER IX - VENDOR CONDUCT AND RESPONSIBILITIES**

#### **9.01 EQUAL EMPLOYMENT AND EDUCATIONAL OPPORTUNITIES**

It is the sole responsibility of the bidder to comply with provisions of the Immigration Reform and Control Act of 1986. The Port hereby stipulates and affirms its policy of offering Equal Employment and Educational Opportunities for all persons regardless of race, creed, color, sex, national origin, age or handicap. The failure of any contractor or supplier to the Port to comply with the terms of this Equal Employment Opportunity Policy will subject any contract or purchase order to revocation.

#### **9.02 E-VERIFY**

Vendor shall utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of: (a) all persons employed by Vendor throughout the term of the contract with the Port; and (b) all persons, including subcontractors, retained or hired by Vendor, regardless of compensation, to perform work under the contract.

#### **9.03 VENDOR CONDUCT**

- a. Conflict of Interest - Any award made by the Port is subject to provisions of Chapter 112, Florida Statutes. All bidders must disclose with their bid, the name of any officer, director, or Manager who is also an employee of Port. Further, all bidders must disclose the name of any Port employee who owns directly or indirectly, an interest of five percent



(5%) or more of the bidder's firm or any of its branches. Any concerns regarding this must be given to the Purchasing Manager prior to bid submittal for clarification and further direction.

Any measure, which would inure to the special private gain or loss, as defined by Section 112.3143 of the Florida Statutes, of a Board Member will require Board approval, and must comply with Chapter 112 of the Florida Statutes. Pursuant to Section 112.3143 of the Florida Statutes, no Board Member may vote on or attempt to influence the decision by oral or written communication, any measure which would inure to his or her special private gain or loss. Such Board Member shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 calendar days after the vote occurs, disclose the nature of his or her interest as a public record using Form 8A (Memorandum of Voting Conflict for State Officers) and filing it with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

- b. Lobbying - After the issuance of any bid/RFP, or during renegotiation of any existing contract, no prospective vendor, bidder, their Managers, representatives, or persons acting at the request of such vendors shall contact, communicate with or discuss any matter relating to the bid/RFP or renegotiations with any Port officer, Manager, Port Authority member, or employee other than the Purchasing Official or his/her designee. This prohibition includes copying such persons on written communications with the Purchasing Official, but does not apply to presentations made to evaluation committees or at Port Authority meetings, where the Port Authority is considering selecting or approval of a proposal, bid, or proposed contract. This prohibition ends upon execution of the final contract or when the bid/RFP has been cancelled or the renegotiation efforts are terminated. Renegotiation is deemed to have commenced upon a vote of the Port Authority directing negotiation or written notice from the Purchasing Official to the existing contractor instituting a renegotiation process. A vendor who violates this provision may be subject to one or more of the following sanctions:
  1. Written warning and reprimand;
  2. Termination of contract; and
  3. Debarment or suspension as provided in Section 1.16.
- c. Gifts and Gratuities - The process of public purchasing should be conducted in such a manner that the integrity of the competitive selection process is not compromised, and therefore the Port strives to eliminate any possibility of, or even the appearance of, improper business relationships. In this regard, the Port prohibits the acceptance of gratuities, gifts, or other favors where the employee has reason to believe that the gift was offered or tendered based upon any understanding that the employee would be influenced by the gift, gratuity, or favor.
- d. Compliance with Chapter 6 Restrictions on Purchases. The vendor must comply with Chapter 6 of this Procurement Policy.

#### **9.04 RESPONSIBILITIES OF PORT AND VENDOR/CONTRACTOR**

- a. Port - Prior to the execution of any contract or approval of any purchase order, the Purchasing Official shall confirm the availability of funds related to the transaction.
- b. Vendor/Contractor - Every vendor/contractor with the Port is responsible for:
  - 1. Notifying the Port of any changes, name, address, products/services, or other pertinent information, via letter or completed W-9 Form.
  - 2. Reading and understanding each page of the Quote, Bid or Request for Proposal.
  - 3. Double-checking its offer prior to submittal.
  - 4. Executing the signature page of the bid document, RFP or quote.
  - 5. Ensuring that its offer is made within the prescribed time limits and to the proper address.
  - 6. Providing all information as required in the RFP, ITB, or the RFQ.
  - 7. If an award is made to your firm, make delivery as specified.
  - 8. Contact the Purchasing Official should you have any questions.

#### **9.05 SUSPENSION OR DEBARMENT**

- a. Suspension - After reasonable notice to the person or entity involved and reasonable opportunity for that person or entity to be heard by the Finance Department's Director, the Finance Department's Director, after consulting with the legal counsel, is authorized to suspend a person or entity from consideration for award of contracts if the Finance Department's Director has adequate documented evidence to demonstrate that the person or entity has engaged in any activity which is grounds for suspension or debarment. The suspension period shall be for a period not to exceed 12 months per violation from the date of the Finance Department's Director's discovery of the most recent incident giving rise to the suspension.
- b. Debarment - After reasonable notice to the person or entity involved and reasonable opportunity for that person or entity to be heard by the Finance Department's Director, the Finance Department's Director, after consulting with the legal counsel, is authorized to debar a person or entity for cause from consideration for award of contracts. The debarment shall be for a period of not more than five years per violation from the date of the purchasing official's discovery of the most recent incident giving rise to the debarment. Debarment may be as to all contracting opportunities, or may be only as to certain types or sizes of projects or contracts, depending on the cause(s) and severity of the reason(s) for debarment.
- c. Suspension or Debarment may apply to all contracting opportunities or may be limited to certain types or categories of contracts and likewise may be directed to one or more distinct operating decisions or units of the suspended or debarred person or entity depending on the nature and severity of the underlying facts supporting the action.
- d. Any business entity controlled by or affiliated with any person or business entity

ineligible for the award of a contract may also be prohibited from contracting with the Port if the relationship or affiliation is such that, in the reasonable opinion of the Finance Department's Director, the person or business entity, by reason of the relationship to the ineligible person or entity, is likely not to conduct business in a responsible or lawful manner, or if the ineligible person or business entity could directly benefit from the contract. Factors the Finance Department's Director may consider in making such decision include ownership interests, common board members, officers, facilities, or employees, and existing family or contractual relationships. The Finance Department's Director may, in lieu of suspending or debaring such affiliated persons or entities, develop restrictions or special conditions the affiliated person or entities must agree to in order to conduct business with the Port during the suspension/debarment period. To exercise the right to suspend or debar affiliated persons or entities under this subsection, he or she must provide those separate affiliates with the same notice and opportunity to be heard as required above.

#### **9.05.01 Causes for suspension and debarment.**

Causes for Suspension and Debarment include:

1. Conviction of an officer of the entity 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 such contract or subcontract, or a civil or criminal final judgment of violation of state or federal whistleblower laws;
2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, 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 Port contractor;
3. Conviction under state or federal statutes arising out of the submission of bids or proposals;
4. Refutation of an offer by failure to provide bonds, insurance, or other required certificates within a reasonable time period;
5. Refusal to accept a contract provided such order was issued timely and in conformance with the offer received;
6. Violation of contract provisions, as set forth below, of a character which is regarded by the Finance Department's Director to be so serious as to justify debarment action;
7. Deliberate failure without good cause to perform in accordance with the specifications and/or budget or within the time limit provided in the contract;

8. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure to perform or unsatisfactory performance was caused by acts within the control of the contractor;
9. A documented history of significant deviation from the contract specifications, engineering standards, design or material requirements or safety regulations where such a history has first been presented to the contractor by the Port and who thereafter continue to engage in such deviations;
10. Any other cause the Finance Department's Director determines to be so serious and compelling as to affect responsibility as a Port contractor, including debarment by another governmental entity for any cause listed above or provided for in general law;
11. For violation of the Chapter IX – Vendor Conduct and Responsibility set forth in the Port Procurement Policy;
12. For violation of the Public Records provision set forth in the Port Procurement Policy; and
13. For violation of any applicable ethics standards, including the ethical standards set forth in Chapter 112 of the Florida Statutes, or in relevant grant funding requirements.

**9.05.02 Process for Suspension or Debarment**

- a. Notice of intent. When the Finance Department's Director is considering imposing a suspension or debarment, he/she shall first provide a written notice setting forth the facts and circumstances supporting the proposed action, and setting a deadline by which the person or entity must submit a response. The response must, at a minimum, include detailed responses to the facts and circumstances set forth in the notice, copies of all relevant documents, and citation to any legal authorities or other cases the person or entity wants to have considered by the Finance Department's Director. Failure to timely file a response shall result in the Finance Department's Director's notice of intent to become final on the date of the deadline (or any extension thereof) set forth in the notice.
- b. Opportunity to be heard. In addition to the opportunity to submit a written response, if, after receipt of the response, the Finance Department's Director determines that it would be helpful for a meeting on the matter, or if a meeting is requested by the person or entity under consideration for suspension or debarment, then the Purchasing Official shall conduct a meeting to listen to any presentation the person or entity wishes to make. No meeting request may be made by a person or entity under consideration for suspension or debarment unless a timely written response as provided for in subdivision (a) above has first been filed.

- c. Final determination. After considering the written response, and any presentation made during a subsequent meeting, the Finance Department's Director shall make a written decision to either withdraw the notice of intent, or to debar or suspend the person or entity. The final decision shall state the factual and legal reasons for the action taken and the term of the suspension or debarment.
- d. Review of suspension or debarment. Final notices of suspension or debarment shall be final and binding unless the debarred or suspended person or entity, within ten (10) calendar days of the decision, files with the office of Finance Department's Director a written notice to the Port Authority requesting review. The written notice shall be printed or typewritten and contain:
  - 1. The name and address of the person or firm filing the appeal;
  - 2. A statement of how and when the final decision was received;
  - 3. A statement of all issues of disputed material fact, and if there are none, a statement so indicating;
  - 4. A concise statement of the ultimate facts alleged;
  - 5. A statement of the applicable law, rule, statute, or other authority upon which the appeal is based and which entitle the appellant to relief;
  - 6. A specific demand for relief; and
  - 7. Any other information material to the appeal.
- e. Upon receipt of a timely appeal, the Port Authority may, in its discretion, request a written response from the Executive Director, or schedule the matter for Port Authority discussion. In any review of a final determination, the review shall be limited to determining whether there was factual support for the decision taken, that the decision does not violate any statute or ordinance, and that all required notices and process have been provided. Neither side may present any new evidence, issue or legal argument not previously presented.
- f. Reinstatement. After suspension or debarment, a person or entity may not contract with the Port until reinstated by the Purchasing. To request reinstatement, the person or entity must submit to the office of Finance Department's Director a written request, which shall at a minimum include all relevant facts and documentation which the person or entity contends supports the early termination of the suspension or debarment. Relevant factors include, but are not limited to, conditions causing the suspension or debarment have been rectified, demonstrated rehabilitation, a change in ownership or control to innocent parties, restitution payments, subsequent court rulings, changes in the law, or where, in the judgment of the Executive Director, or designee, the Port's interests would be adequately protected, and the person or entity to be reinstated is not likely to engage in similar conduct again. The Finance Department's Director may also grant limited reinstatement to respond to emergency

contracting needs. As a condition of reinstatement, the Finance Department's Director may limit the nature and scope of contractual undertakings that must be satisfactorily completed before seeking additional contracts from the Port. The reinstatement determination must be in writing, inform the person or entity of any conditions of reinstatement, and inform of any rights to administrative or judicial review and be sent via certified mail to the suspended, debarred, or reinstated person or entity.

- (f) Copies of all suspension, debarment and reinstatement decisions shall be maintained by the Finance Department's Director's office. The Finance Department's Director is authorized to develop supplemental administrative procedures and forms not inconsistent with this policy to facilitate implementation thereof.

## **9.06 COMPLIANCE WITH THE PROCUREMENT POLICY**

**By providing any good or service to the Port, the vendor/contractor agrees to comply with the provisions of this procurement policy. Failure of a vendor/contractor to comply with the terms of this procurement policy may be deemed as a default or breach of contract and provide cause for termination of the contract.**

## **CHAPTER X - DONATIONS AND SURPLUS GOODS**

### **10.01 DONATIONS**

Nothing herein contained shall prohibit or prevent the Executive Director from accepting donations, gifts or grants of construction, goods, professional services or services directly to the Port Authority, where, in the judgment and discretion of the Executive Director, there are no improper conditions or restraints imposed or suggested in connection with any such donation, gift or grant.

### **10.02 SURPLUS GOODS**

The Port Authority shall classify as surplus, any of its goods which serve no useful function, or the continued use of which is uneconomical or inefficient, or which are obsolete. The Executive Director is authorized and empowered to negotiate, prepare, promote, propose and execute on behalf of the Port Authority bills of sale, certificates of title and other documents for the alienation, disposal or transfer of the ownership of surplus goods.

In accordance with Chapter 274 of the Florida Statutes, the Port may classify any of its tangible property as surplus, if that property is obsolete, the continued use is uneconomical or inefficient, or it serves no useful function. If the surplus goods are included on the Port Authority Asset

Listing, the method of disposal shall first be specifically authorized by the Port Authority. If the value of the surplus goods is less than \$50,000.00, said surplus goods may be disposed of in the following manner:

- (a) Sell to the public by auction or sealed bids.
- (b) Offer to governmental entities or non-profit entities by sealed bids.
- (c) Trade-in on the procurement of goods.
- (d) Strip all useable parts and sell the remainder as scrap.

If the value of the surplus goods is less than \$5,000.00, the surplus may be disposed of in the most efficient and cost effective means, including any of the above listed methods of disposal, being placed in trash container, or make E-scrap arrangements for disposal. If the surplus good is without commercial value, then in addition to the above methods of disposal, it may also be donated or destroyed. A report shall be maintained of all goods declared surplus and the manner in which the surplus goods were disposed of by the Executive Director or his designee.

### **10.03 PUBLIC AUCTIONS**

Goods may be procured and obtained for the Port Authority, or disposed of and sold by the Port Authority at public auctions conducted or operated by public or private entities under the following conditions:

1. A written estimate of the average retail price or value of the particular goods to be procured or disposed of shall be made prior to the conduct of any such auction.
2. The Executive Director or the designee or nominee of the Executive Director is authorized and empowered to participate in any such auction and submit bids for the procurement of any such goods as long as the bid or bids submitted do not exceed the written estimate of the average retail price or value of the particular goods.
3. The Executive Director or the designee or nominee of the Executive Director is authorized and empowered to cause Port Authority owned goods to be consigned to or placed with the auctioneer upon the condition that the particular goods shall not be disposed of or sold at any such auction for an amount less than the above mentioned written estimate of the present value to the Port Authority of the particular goods.

## **CHAPTER XI-PURCHASING METHODS**

### **11.01 PURCHASING MECHANISMS**

Below is a series of mechanisms for paying for a purchase. These are methods of payment and not methods of procurement.

#### **11.01.01 Petty Cash**

The purpose of the petty cash is to provide a means of handling cash expenditures of a minor nature. Only the person designated the custodian or the alternate custodian should be permitted access to the fund. The fund must be kept in a separate cash box that can be locked up in a safe or other secure place.

Any money given out of the fund to an employee for purchase will be supported by a signed memorandum so that the full amount of the fund is reflected at all times. Unexpended funds and receipts should be returned to the custodian as soon as possible and a petty cash voucher prepared.

#### **11.01.01.01 Limitations on Petty Cash**

The following are limitations or restrictions on petty cash:

- 1) With the exception of freight or parcel post charges, expenditures are limited to \$100.00. Certain departments that receive written permission from the designated finance personnel, because of the nature of their operation, may exceed the limits established for the petty cash fund to accept delivery and pay for food, beverages, etc.
- 2) Purchases of more than \$100.00 but less than \$500.00 will be submitted for payment using a Direct Voucher (DV).
- 3) Checks are not to be cashed from the fund.
- 4) The only travel expenses that can be reimbursed through Petty Cash are for toll charges, parking fees up to \$15 and gas purchases that occur when an employee is using a Port vehicle.
- 5) I.O.U.'s by employees or the custodian will not be authorized.
- 6) Expenditures will not be reimbursed for stocked stores inventory items of the Port.

#### **11.01.01.02 Petty Cash Procedure**

- 1) To establish the fund, the Director of the department submits a Manatee County Certificate and Receipt of Imprest Funds form to the Finance Director of the Clerk's Office to establish and authorize the amount of the fund. The form designates who will be the custodian of the fund.
  - a) Once established, the Certificate and Receipt of Imprest Funds will remain valid until changes are made in amount of the fund, purpose of fund, location of fund or custodian. Changes in these areas will necessitate the execution of another form.
  - b) Finance retains the original and the custodian keeps the copy on file with other petty cash documents.
- 2) A Petty Cash Voucher will be prepared for each disbursement of funds at the time of expenditure. All vouchers must be signed by the person receiving the cash and an object code assigned by class of expenditure. The person receiving the merchandise or service will sign the receipt of invoice as evidence that the merchandise or service was received. The signed receipt or invoice will be attached to the voucher.



- a) Vouchers with receipts attached plus cash on hand must equal the total amount of the fund at all times.
- 3) When the custodian decides to replenish the fund, all vouchers by object code are totaled and entered on an audit slip.
    - a) All pertinent information on the audit slip will be filled in and the Petty Cash vouchers with receipts will be attached to the audit slip.
    - b) The custodian will insure the fund reconciles at this point. A copy of the audit slip serves to reconcile the fund until the replenishment check is cashed.
    - c) The Finance Department's Director or designee approves the audit slip.
    - d) The audit slip with attached documents will be submitted to the Clerk of the Circuit Court Finance Department for funds replenishing.
    - e) The Clerk of the Circuit Court Finance Department will recheck the accuracy and validity of the voucher's account number and object codes of the vouchers prior to processing for payment.
    - f) When the check is ready to be picked up at the Clerk of the Circuit Court Finance Department, the custodian will make arrangements for the courier to pick up the check.
    - g) The custodian cashes the check and replenishes the petty cash fund, removing all documents that pertained to this replenishment in order to prevent confusion in reconciling later vouchers.
    - h) All funds will be reconciled annually as of the last day of the fiscal year.

### **11.01.02 Purchasing Card**

The Manatee County Port Authority PCard Program is designed to improve efficiency in processing low dollar purchases from any vendor that accepts a credit card, thereby reducing paperwork involved in issuance of purchase orders.

The Purchasing Card Policy is developed for establishment of uniform policy and procedures relating to:

- 1) Ensuring that Purchasing Card purchases are in accordance with the Port's Purchasing Policies and Procedures.
- 2) Eliminating the use of Field Purchase Orders (FPOs).

- 3) Ensuring that the Port and the Clerk of the Circuit Court bear no legal liability from inappropriate use of Purchasing Cards.
- 4) Providing for disciplinary action if the Purchasing Cards are misused.
- 5) Providing for the payment of authorized declared emergency expenditures using Emergency Purchasing Cards.

The Purchasing Card may be used for other procurements when deemed in the best interest of the Port. The Purchasing Card Program will allow the Cardholder to purchase approved commodities and services directly from vendors. Each Purchasing Card is issued to a named individual, and Manatee County Port Authority is clearly shown on the Card as the governmental buyer of commodities and services. Departmental Purchasing Cards can be made available in special circumstances approved by a Director.

Each Cardholder is responsible for following the Purchasing Card Procedures issued by the Finance Department, including limitations on purchase types and amounts and reporting requirements. Directors are responsible for ensuring that all employees in their Department comply with the Purchasing Card Procedures. The Finance Department will monitor the performance of the program. The Purchasing Card Administrator will have the authority to revoke misused Purchasing Cards.

Purchases using Purchasing Cards (“P-Cards”) must be made in accordance with this Procurement Policy and the Purchasing Card Policies and Procedures Manual. P-Cards are a payment mechanism not a procurement mechanism. An employee that has a frequent and recurring need to purchase supplies and services not to exceed \$1,000 per day from a single vendor without incurring prior specific approval may use P-Cards. The Port currently has P-Cards in the form of Home Depot, Staples, Publix, Bank of America, Sears, Office Depot, ProMarine, Lowes, Exxon, and Chevron credit cards. Open accounts with local vendors for miscellaneous supplies purchased in small quantities such as small tools, fasteners, auto parts, and food supplies are also considered P-Card purchases.

The department utilizing the P-Card is responsible for providing invoices, receipts, or other acceptable documentation signed by the appropriate Department Director or their designee to the Finance Department. All invoices or receipts shall be coded with the location or equipment code (unless general restock items) and account number to be charged.

The P-Card may be used to pay for larger purchases, when it is in the best interest of the Port. In these circumstances, other procurement procedures apply. The use of a P-Card must not circumvent this Procurement Policy. Personal use of any Port credit card, P-Card, or Petty Cash is strictly prohibited.

### **11.01.03 Purchase Requisition**

A Purchase Requisition is required for the purchase of all items over \$2,500, not of an emergency nature, and not covered under Petty Cash, P-Card. The Purchase Requisition serves to inform the Purchasing Department of the needs of a specific user and to define correctly the material or service requested. The Purchase Requisition is not an order, but merely the request for the Purchasing Department to procure the item(s) or service(s) in accordance with established Port purchasing policies and procedures.

A Purchase Requisition will originate from the user and proceed to the Purchasing Department after receiving appropriate approvals.

The Department Director is responsible for insuring that sufficient funds and budget authority are available. The Finance Department's Director or designee must approve all requests for over-rides of a department budget.

The requesting department should anticipate their requirements and submit a Purchase Requisition allowing ample time for Purchasing to complete action to secure the items needed at the time required. Rush or emergency orders will be authorized on a case-by-case basis to avoid additional costs affiliated with expediting delivery.

Purchasing staff will review each Purchase Requisition for accuracy and compliance with the established Procurement Policy. The Purchasing Official, if deemed necessary, may correct a Purchase Requisition. If information is incomplete, the Purchase Requisition will be sent back to the requestor for more information. Once a Purchase Requisition is complete, it will be converted into a Purchase Order.

Other items to remember when submitting a Purchase Requisition:

- 1) Freight costs must be included in the quotation. The standard terms and conditions of the Port Purchase Order form includes the requirement that shipments are "Free on Board (F.O.B.) destination," meaning the seller bears all risk until the goods are delivered to the Port's specified destination. During discussions with vendors, the cost of any required freight must be obtained so that it can be included in the price. It is the Port's goal not to pay freight charges if possible. If the vendor will not include freight as a component of the item cost, then the initiating department must include freight as a separate line item on the Purchase Requisition.
- 2) All Purchase Requisitions requesting a Sole Source or otherwise non-competitive procurement must have written justification submitted to the Purchasing Official.
- 3) New Vendors: All requisitions for a vendor not currently on the Port's vendor list must state "New Vendor" on the Purchase Requisition. A completed, signed W-9 must be included with the Purchase Requisition. The name, address, city, state, zip code, phone number, fax number, and e-mail address, as well as a contact name of the "New Vendor" must be included on the Purchase Requisition

#### **11.01.04 Purchase Order, Direct Voucher, Audit slip**

##### **1) Purchase Order**

A Purchase Order is a legal document authorizing the purchase of and subsequent payment for materials, supplies, equipment, construction, repairs and services, etc. Purchase Orders will be issued by the Purchasing Official after all required authorizations and requirements within this Procurement Policy have been met. A Purchase Order is prepared from an approved Purchase Requisition or Port Authority authorized expenditure and must be written so that it is concise and clear. This will prevent any unnecessary misunderstandings and correspondence with vendors. Each Purchase Order must contain standard terminology defining requirements for the vendor to follow and contain the approved Purchase Order Terms and Conditions.

Purchase Orders may be revised to correct errors, omissions, or discrepancies; cover acceptable overruns and freight costs; and incorporate requirements to expend or reduce the scope of goods or services ordered. If a Department desires to change or cancel a Purchase Order after it has been encumbered, the Department must notify the Purchasing Official in writing with a brief explanation of the change. Freight, shipping & handling charges, and back-order related changes do not require an explanation.

Revisions that decrease the Purchase Order total do not require approval. Department Director approval is required if the amount of the change requested is greater than \$100. Executive Director approval is required if the original Purchase Order was for more than \$2,500.00 or if the change will make the total Purchase Order greater than \$2,500.00. If the original Purchase Order was awarded by Port Authority action or if the proposed changes to a Purchase Order will cause the total value to exceed \$200,000.00, then any revision must go to the Port Authority for approval.

## **2) Direct Voucher**

A Direct Voucher is used for costs or services less than \$2,500.

## **3) Audit slips Direct Purchases**

Most Port purchases originate with a Purchase Requisition and are authorized by a Purchase Order. However, there are certain circumstances where this process is unnecessarily cumbersome. In these situations, the Port processes the direct purchases on an Audit slip or are setup via autopay with the Finance Department of the Clerk of the Court.

A list of approved Direct Purchases is below:

- a) Utilities (electric, water, gas, telecommunications, etc.)
- b) Legal Services, including Court Reporters
- c) General Liability, Property, Workers' Compensation and Flood Insurance Premiums
- d) Goods, Services, or Donations provided with Non-Port Funds (Developer Deposits, Repayment of Maintenance Bonds, Scholarships, Pass-through Donation, etc.)
- e) Customer Refunds
- f) Debt Service Payments
- g) Unemployment Compensation
- h) Tax Withholding Payments
- i) Employee Garnishments
- j) Sales Tax Payments
- k) Land Purchases
- l) Memberships, Subscriptions, and Publications

- m) Professional Dues and Licenses
- n) Seminar and Travel Expenses
- o) Per Diem and Mileage Reimbursement
- p) Employee Tuition Reimbursement
- q) Petty Cash Reimbursement
- r) Workers Compensation Claims
- s) Investments
- t) Postage
- u) Recording Fees
- v) Automobile License Plates
- w) Advertisements
- x) Licenses and Permits
- y) Credit Card Merchant Service Fees and Bank Fees
- z) Credit Card Remittances
- aa) Other items as approved by the Finance Department's Director

### **11.02 SALES TAX EXEMPTION**

The Port is exempt from paying Florida State Sales Tax. All employees who purchase goods or services on behalf of the Port shall supply each vendor with a copy of the Port's sales tax exemption certificate or number to avoid being assessed state sales taxes. Employees will not be reimbursed for the payment of state sales tax, except for travel outside the State of Florida and meals while traveling under Class "C" travel, where per diem is not issued.

The Sales Tax Exemption privilege is for the purchase of goods exclusively for use of the Port. Port employees are expressly prohibited from purchasing goods or supplies for personal use using the Port's tax exemption certificate or number.

### **11.03 SHORT-TERM LEASES**

The Executive Director may negotiate and enter into a lease of Port real property so long as that lease is for no longer than 1 year. All leases for more than 1 year must come before the Port Authority for approval.

## **CHAPTER XII-FINANCIAL POLICIES**

### **12.01 REFUNDS**

Any refund of a revenue item over \$50,000.00 requires Port Authority approval. Refunds of

deposits held by the Port may be disbursed without Port Authority approval. Regardless of the amount of the bid bond, bid bonds may be refunded without seeking Port Authority approval so long as the Executive Director or designee approves the refund.

## **12.02 BUDGET IMPLEMENTATION**

### **12.02.01 Authority and Accountability**

The Executive Director is responsible for managing all financial resources budgeted under the Port Authority. Keeping within overall budget limits as adopted or amended, the Executive Director has the authority, subject to controls set forth herein, to adjust allocations of resources to accomplish the goals and objectives of the Port Authority. The Executive Director or designee will establish criteria to use in evaluating financial management performance of department managers.

### **12.02.02 Budget Implementation**

The Executive Director or designee will set forth procedures and guidelines to be followed by departments in developing budget requests. Department budget requests will be reviewed, analyzed and aggregated into budget recommendations that will reflect the objectives and policies of the Port Authority. The proposed budget will be presented to the Port Authority and adopted in accordance with Florida Law.

Budget recommendations will include Reserves as deemed appropriate by the Executive Director. In addition to Reserves for Contingency, other Reserves may be budgeted for items including but not limited to: Reserve for Cash Balance which will include monies intended to be used for cash flow purposes and should, in aggregate, be adequate to ensure availability of operating cash prior to receipt of budgeted revenue; Prior Year Appropriation, for encumbrances and items budgeted and/or requisitioned in the previous year but not delivered or invoiced in the previous year; Reserve for Salary Adjustment, which will be budgeted in each fund to pay for planned merit increases, wage adjustments and unrealized attrition, and distributed to operating cost centers only if needed; Reserve for Capital Outlay, which may include funds set aside for capital equipment and/or capital improvements. Reserves for Contingency may include funds for specific items or activities that are not intended for purchase unless specific authorization from the Port Authority is given during the fiscal year.

Budgets will be established and expended to reflect as accurately as possible all costs related to activities of each program or cost center. To accomplish this, salaries will be allocated between appropriate cost centers when necessary. An attrition factor, based on experience, may be applied to departmental salary budget allocations.

### **12.02.03 Budget Administration**

With adoption of a budget, the Port Authority is approving a broad policy plan as well as the estimated funding needs at the fund and departmental level. Line items and account keys are

subsets of fund and departmental budgets established for control and tracking purposes, and are not mandates to fully expend funds appropriated, nor are they unchangeable limits.

Budget control will be exercised at the account key level. Budget line items may show negative balances, but total budgets for account keys may not be exceeded. Budget performance will be evaluated based on budget and actual amounts as of the end of the fiscal year.

The following Competitive Threshold Category Three items, if they have been approved in the annual budget, do not require additional Port Authority approval for the payments made within the budgeted amount: Utilities, postage, employee tax withholding, pension benefits, items covered by approved insurance policies, debt service payments, investments purchased in accordance with the Port's Investment Policy, legal services in accordance with an approved Contract, and fees payable to other governmental agencies as may be required by law, and legal advertisements.

## **CHAPTER XIII-LEGAL REFERENCES**

### Section 1.01

Art. VII, §1, Fla. Constitution limits the expenditure of tax revenue to public purpose. *Brown v. Winston*, 197 So. 543 (Fla. 1940); 1958 Op. Att'y Gen. Fla. 085-305 (Nov. 10, 1958). Fair and equitable process. *Similar to* §287.001, Fla. Stat. (2020)

### Section 1.03

“Best” Similar to §287.012 (4), Fla. Stat. (2020)

“Competitive Selection” Similar to §287.012 (6), Fla. Stat. (2020)

“Design-Build Firm” §287.055(2)(h), Fla. Stat. (2020)

“Design-Build Contract” §287.055(2)(i), Fla. Stat. (2020)

“Design Criteria Package” §287.055(2)(j), Fla. Stat. (2020)

“Design Criteria Professional” §287.055(2)(k), Fla. Stat. (2020)

“Electronic posting or electronic post” Similar to §287.012 (10), Fla. Stat. (2020)

“Invitation to Bid” Similar to §287.012 (16), Fla. Stat. (2020)

“Invitation to Negotiate” Similar to §287.012 (17), Fla. Stat. (2020)

“Request for Information” Similar to §287.012 (22), Fla. Stat. (2020)

“Request for Proposal” §287.012 (23), Fla. Stat. (2020)

“Request for Quote” Similar to §287.012 (24), Fla. Stat. (2020)

“Responsible vendor or bidder” Similar to §287.012 (25), Fla. Stat. (2020)

“Responsive bid” Similar to §287.012 (26), Fla. Stat. (2020)

“Responsive vendor or bidder” Similar to §287.012 (27), Fla. Stat. (2020)

“Sole source” *Accela, Inc. v. Sarasota County*, 993 So. 2d 1035, 1041 (Fla. 2d DCA 2008)  
(Similar provisions in Sarasota County code were reviewed in this case).

## Section 1.05

Continuing Contract §287.055(2)(g), Fla. Stat. (2020)

## Section 1.07

Public Records – Chapter 119, Fla. Stat. (2020);

*Similar to* §287.058(1)(c), Fla. Stat. (2020), §119.0701, Fla. Stat. (2020)

## Section 2.0

Auditor Selection §218.391, Fla. Stat. (2020)

Local Government Investment Policies §218.415, Fla. Stat. (2020)

Public Construction/Works §255.20, Fla. Stat. (2020)

Consultants’ Competitive Negotiation Act §287.055, Fla. Stat. (2020)

## Section 2.02

Performance and Payment Bond - §255.05, Fla. Stat. (2020); §287.0935, Fla. Stat. (2020);

Public Records Exemption - §119.071 (1)(b)(2), Fla. Stat. (2020), provides that sealed bids/proposals are not subject to the public records production until such time as the District provides notice of a decision or intended decision or until 30 days after opening the bids, proposals or final replies. The 30-day period does not include the date of the notice or opening.

Reject all bids - *Webster v. Belote*, 138 So. 721 (Fla. 1931); *Department of Transportation v. Grove-Watkins Constructors*, 530 So. 2d 912 (Fla. 1988) (FDOT is empowered to reject any and all bids in the absence of fraud, collusion, bad faith or arbitrary action); *Couch Construction Co. v. Department of Transportation*, 361 So. 2d 172 (Fla. 1st DCA 1978)(FDOT has wide discretion to reject all bids and to call for new bids for public contracts, but in making such a determination, FDOT cannot act arbitrarily). “Even if the public entity makes an erroneous decision about which reasonable people may disagree, the



discretion of the public entity to solicit, accept and or reject contract bids should not be interfered with by the courts, absent a showing of dishonesty, illegality, fraud, oppression or misconduct.” *Paul Jacquin & Sons, Inc. v. City of Port St. Lucie*, 69 So. 3d 306, 308 (Fla. 4th DCA 2011), reh'g denied (Oct. 6, 2011); *City of Cape Coral v. Water Services of Am., Inc.*, 567 So. 2d 510, 512 (Fla. 2d DCA 1990) (i.e., because Bidder relied on the representations of the City, namely that a bid would not be rejected because the contractor was not licensed, the court ruled the bidder gets its preparation costs.) *Gulf Real Properties, Inc. v. Dep't of Health & Rehabilitative Services*, 687 So. 2d 1336, 1337 (Fla. 1st DCA 1997) (after a protest is filed, an entity may reject all bids).

Incomplete packages or minor abnormalities - Whether material or immaterial turns on whether providing the bidder the waiver would give that Bidder a substantial advantage over other bidders. *Tropabest Foods, Inc. v. State Department of General Services*, 493 So. 2d 50 (Fla. 1st DCA 1986).

Drug Free Workplace - §287.087, Fla. Stat. (2020)

*Similar to:* Protest §120.057(3), Fla. Stat. (2020); §287.042(2)(c), Fla. Stat. (2020);

Factors to consider - §287.055, Fla. Stat. (2020)

*Similar to:* §287.057(1)(c), Fla. Stat. (2020)

### Section 3.01

Auditor Selection §218.391, Fla. Stat. (2020)

### Section 3.02

Local Government Investment Policies §218.415, Fla. Stat. (2020)

### Section 3.03

Public Construction/Works §255.20, Fla. Stat. (2020); §255.0525, Florida Statutes (2020)

### Section 3.04

Consultants' Competitive Negotiation Act §287.055, Fla. Stat. (2020)

### Section 4.01

*Similar to:* §287.057(3)(e), Fla. Stat. (2020);

*Similar to* Sole Source - §255.04, Fla. Stat. (2020)

Piggy- backing §189.053, Fla. Stat. (2020).

#### Section 6.0

Public Entity Crime §287.133, Fla. Stat. (2020)

Scrutinized Companies §287.135, Fla. Stat. (2020)

#### Section 7.0

Tax Saving Program – Chapter 212, Fla. Stat. (2020); §212.08 (6), Fla. Stat. (2020)

#### Section 8.0

Public Private Partnerships §255.065, Fla. Stat. (2020); §311.091, Fla. Stat. (2020)

#### Section 9.0

Ethics §112.313, Fla. Stat. (2020)

#### Section 10.0

Surplus Goods – Chapter 274, Fla. Stat. (2020);