

**Amended and Restated
JEA Procurement Code**
Effective April 27, 2021

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DEFINITIONS

Addendum means a document issued by JEA which modifies a Solicitation.

Appeal shall have the meaning set forth in Section 5-106 of this Code.

Award means the written approval of the JEA Awards Committee with the written concurrence of the Chief Executive Officer that a Formal Purchase will be in accordance with this Code and the best interest of JEA.

Awards Committee means the body appointed by the Chief Executive Officer in accordance with Section 2-106 of this Code.

Best and Final Offer or *BAFO* means a Vendor's final offer following the conclusion of contract negotiations in connection with an Invitation to Negotiate.

Bid means a Vendor's offer to provide Services or Supplies in response to an Invitation for Bid.

Bidder means a Vendor submitting a Bid in response to an Invitation to Bid.

Bond Insurance means an agreement supplied by an insurance company in conjunction with a debt issue that provides for the guarantee of payment of principal and interest to the debt holder.

Business Day is any day except any Saturday, any Sunday or any holiday observed by JEA's Procurement office.

Cap means an agreement obligating the seller of the Cap to make payments to the buyer of the Cap, each payment under which is based on the amount, if any, by which a reference price or level or the performance or value of one or more underlying interests exceeds a predetermined number, sometimes called the strike/Cap rate or price.

Chief Procurement Officer or *CPO* means the person holding the position appointed in accordance with Section 2-103 of this Code.

Code means this Amended and Restated JEA Procurement Code.

Collar means an agreement to receive payments as the buyer of an Option, Cap, or Floor, and to make payments as the seller of the Collar of a different Option, Cap, or Floor.

Construction means the process of building, altering, repairing, improving, or demolishing any structure or building, or other improvements of any kind to any real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

Construction Management Entity means a licensed general contractor or a licensed building contractor, as defined in Section 489.105, Florida Statutes, as amended, who coordinates and supervises a Construction project from the conceptual development stage through final Construction, including the scheduling, selection, contracting with, and directing of specialty trade contractors, and the value engineering of a project.

Construction Manager at Risk or *CMAR* shall have the meaning set forth in Section 3-109 of this Code.

Consultants' Competitive Negotiation Act or CCNA means Section 287.055, Florida Statutes, as amended, relating to the Procurement of certain architectural, engineering, landscape architectural, and mapping and surveying Services.

Contract means all types of agreements for the Procurement of Supplies or Services, regardless of what these agreements may be called, and shall include, but not be limited to, a Purchase Order issued by JEA and accepted by a Vendor.

Contract Amendment means a written amendment executed after the execution of the Contract formalizing any revisions to the Contract.

Collaborative Procurement means a Procurement undertaken by JEA in accordance with Section 3-115 of this Code.

Data means recorded information, regardless of form or characteristic.

Design-Build Contract means a single Contract with a Design-Build Firm for the design and Construction of a Construction project as defined in CCNA.

Designee has the meaning set forth in Section 4-302 of this Code.

Determination means a finding or decision by JEA made in the course of the process of procuring Supplies or Services under this Code.

Emergency shall have the meaning set forth in Section 3-113 of this Code.

Ex Parte Communication has the meaning set forth in Section 1-107 of this Code.

Floor means an agreement obligating the seller of the Floor to make payments to the buyer of the Floor, each payment under which is based on the amount, if any, that a predetermined number, sometimes called the strike/Floor rate or price, exceeds a reference price, level, performance or value of one or more underlying interests.

Florida's Open Meetings Laws means the laws found in Chapter 286, Florida Statutes, as amended.

Formal Purchase shall have the meaning set forth in Section 3-101 of this Code.

Forward Supply Agreement means a supplier has agreed to supply or cause to be supplied appropriate investments in appropriate amounts and for appropriate periods and to pay consideration to an entity either over time or up-front in an amount determined by bid or negotiation for the right to supply such investments to the escrow holder or other recipient identified by the entity.

Governmental Entity means any state or territory of the United States, or any county, city, town or other subdivision of any state or territory of the United States, or any public agency, public authority, educational, health, or other institution of such subdivision.

Hedge means any transaction which is entered into and maintained to reduce the risk of a change in the value, yield, price, cash flow, or quantity of, or the degree of exposure with respect to, assets or liabilities which the buyer has acquired or incurred or anticipates acquiring or incurring.

Informal Purchase shall have the meaning set forth in Section 3-102 of this Code.

Intent to Award means JEA's announcement via an email, posting of the Awards Committee agenda, or issuance of an Addendum stating its intent to award a Formal or Informal Contract.

Invitation for Bid or IFB means a type of Solicitation requesting price offers and qualification information for defined Supplies or Services.

Invitation to Negotiate or ITN means a type of Solicitation requesting competitive sealed replies with the intent to select one or more Vendors with which to commence negotiations for the procurement of Supplies or Services, and usually concluding with a Best and Final Offer from Respondents.

JEA means that body politic and corporate created and established in Article 21 of the Charter of the City of Jacksonville.

JEA Board means the members of the JEA appointed to serve as provided by Section 21.03 of the JEA Charter.

JEA Charter means Article 21 of the Charter of the City of Jacksonville, as amended from time to time.

Letter of Credit means a commitment, usually made by a commercial bank, to honor demands for payment of an obligation upon compliance with conditions and/or the occurrence of certain events specified under the terms of the commitment.

Liquidity Support means lines of credit, usually made by a commercial bank, provided to a debt issuer to pay the principal amount of debt either upon maturity or upon demand by the debt holder for payment in conjunction with the issuance of debt, often in the form of commercial paper, in the event that the remarketing agent or the dealer is unable to remarket the debt.

Office of General Counsel means the City of Jacksonville's Office of the General Counsel.

Operational Procedures means the written process and procedures applicable to JEA Procurements and Procurement activities that have been promulgated in accordance with this Code.

Option means an agreement giving the buyer the right to buy or receive, sell or deliver, enter into, extend or terminate, or effect a cash settlement based on the actual or expected price, level, performance, or value of, one or more underlying interests.

Organizational Element means any subdivision of JEA — for example, a team, area, activity, department, group, business unit. — that utilizes Supplies or Services procured under this Code.

Organizational Element Manager means the person designated by the Chief Executive Officer to have responsibility for Procurement policies and procedures for certain categories of Supplies and Services under Section 2-102 of this Code.

Pre-Source Selection Methods means the pre-source selection methods described in Section 3-103 of this Code.

Pilot Project shall have the meaning set forth in Section 3-118 of this Code.

Post, Posting or Posted means placing documents or information on JEA's centralized internet website in the manner and location in which similar documents or information are typically posted.

Procurement means purchasing, renting, leasing, or otherwise acquiring; or selling, renting, leasing or otherwise disposing of any Supplies or Services, including, but not limited to, all functions that pertain to such activities – e.g., description of requirements, selection and solicitation of sources, and preparation and Award.

Procurement Appeals Board means the body comprised of at least three members of the Awards Committee as designated in this Code to hear Appeals regarding Procurement actions in accordance with Article 5 of this Code.

Professional Services shall have the meaning set forth in the CCNA.

JEA Project Manager shall have the meaning set forth in Section 3-122.

Proposer means a Vendor submitting a Proposal in response to a Request for Proposals.

Proposal means a Vendor's submittal of its offer in response to a Request for Proposals.

Protest shall have the meaning set forth in Section 5-101 of this Code.

Protestant means a Vendor who files a timely and proper Protest in accordance with Article 5 of this Code.

Purchase Order means a document issued by JEA requesting that a Vendor provide specified Supplies and Services to JEA and may contain additional terms and conditions related to the provision of such Supplies and Services.

Real Estate means land, including buildings and improvements, its natural assets, easements or a permanent interest therein.

Repurchase Agreement means a transaction in which one party (seller) agrees to transfer to the other party (buyer) securities against the transfer of funds by the buyer with a simultaneous agreement by the buyer to transfer to the seller such securities at a date certain or upon demand against the transfer of funds by the seller.

Request for Information has the meaning set forth in Section 3-103 of this Code.

Request for Proposals means a type of competitive Solicitation requesting offers that includes qualifications, methods or other information, and may or may not include price, in the form of a Proposal.

Request for Qualifications or RFQ has the meaning set forth in Section 3-103 of this Code.

Response means a Vendor's submittal of its qualifications and price to in response to an ITN or other Solicitation.

Respondent means a Vendor submitting a Response to an ITN or other Solicitation.

Responsible Bidder (or Responsible Proposer or Responsible Respondent) means a Vendor that, in the Chief Procurement Officer's Determination, has the business judgment, experience, facilities and capability in all respects to perform fully the Solicitation requirements, and the integrity and reliability that will assure good faith performance.

Responsive Bidder (or Proposer or Respondent) means a Vendor that, in the Chief Procurement Officer's Determination, has submitted a Bid, Response or Proposal that conforms in all material respects to a Solicitation.

Reverse Auction means a type of auction in which sellers bid for the prices at which they are willing to sell their Supplies or Services.

Securities Lending means an activity in which securities are loaned to a dealer or financial institution by a lending party in exchange for a fee and collateral comprising securities with a market value greater than the loaned securities. Loaned securities are due upon demand by the lending party.

Services means the furnishing of labor, time or effort by a Vendor, and includes, but is not limited to, work performed on Construction projects and the receipt, delivery and transmission of electric power, fuel, by-products or thermal energy, work customarily rendered by attorneys, certified public accountants, insurance agents, financial advisors, personnel consultants, health care providers and consultants, systems consultants, software or technology consultants, temporary staffing providers, and management consultants, and administrative, maintenance, repair, installation and other technical services. This term shall not include employment agreements or collective bargaining agreements.

Single Source has the meaning set forth in Section 3-112 of this Code.

Solicitation means a document (which may be electronic) issued by JEA for the Formal Purchase of Supplies, Services, or Real Estate.

Source Selection means the type of Solicitation advertised or Procurement method JEA utilizes to obtain responses from Vendors to provide Services or Supplies (e.g., Invitation for Bids, Request for Proposals, Invitation to Negotiate)

Specifications means any description of the physical or functional characteristics, or of the nature of an item of Supply or Service. It may include a description of any requirement for inspecting or testing an item of Supply or Service or preparing such item for delivery. Also commonly referred to as Technical Specifications.

Supplies means all property, including but not limited to, equipment, materials, repair parts, consumables, tools, printing, and leases of real property.

Swap (Interest Rate or Commodity) means an agreement to exchange, or net, payments at one or more times based on the actual or expected price, level, performance, or value of one or more underlying interests.

Tri-party Repurchase Agreement means an agreement between the buyer, seller and custodian whereby the custodian is not affiliated with either the buyer or the seller, and the custodian is the safekeeping agent for securities involved in a Repurchase Agreement transaction.

Utility Industry Partner means a publicly-owned or privately-owned utility, utility industry trade association; exempt wholesale generator; co-generator or small power producer, or other entity whose business purpose is the generation or transmission or distribution or the promotion of the efficient use of electricity or water, approved by the Chief Procurement Officer, with whom JEA may legally engage in a Collaborative Procurement provided in Section 3-115 of this Code or a Joint Project as provided in Section 3-117 of this Code.

Vendor means any person or legal entity that provides, agrees to provide, or is interested in providing, Supplies or Services to JEA.

ARTICLE 1- GENERAL PROVISIONS

1-101 Purposes, Rules of Construction

(1) *Interpretation.* This Code shall be construed to be consistent with the guiding principles and to promote its underlying purposes and policies set forth in this Section 1-101.

(2) *Guiding Principles.* This Code shall at all times be subject to the provisions of the JEA Charter found in Article 21 (JEA), Charter of the City of Jacksonville and the following guiding principles:

(a) *Open and Fair Competition.* To the greatest extent reasonably possible, JEA shall use fair, competitive, and generally accepted government Procurement methods that seek to encourage the most competition and best price for the purchase of supplies, construction, professional and other contractual services. JEA should adhere to all applicable state procurement laws, including but not limited to laws governing the purchase of construction services and professional design services.

(b) *Transparency in Procurement processes.* This Code and all Procurement policies, Operational Procedures, rules, directives, standards, and other procurement governing documents, including any amendments thereto, shall be posted on JEA's website in a conspicuous manner for the public to view. All records of JEA Procurement activities shall be subject to disclosure under Florida's public records laws, including, but not limited to those laws codified in Section 119, Florida Statutes, as amended.

(c) *Use of certain agreements.* The use of confidentiality, nondisclosure or similar agreements by government agencies are contrary to open and transparent government. Except regarding information or records deemed by JEA to be confidential or exempt information or records by law, JEA should not enter into confidentiality or nondisclosure agreements with third parties and should use confidentiality, nondisclosure or similar agreements sparingly in the conduct and operation of its Procurement activities. Additionally, JEA shall not require a member, officer or employee to maintain the confidentiality of information or records that is not confidential or exempt by law.

(3) *Purposes and Policies.* The underlying purposes and policies of this Code are:

(a) to provide for increased public confidence and consistency in the procedures followed in JEA Procurement;

(b) to ensure the fair and equitable treatment of all persons who deal with the JEA Procurement system;

(c) to maximize, to the fullest extent practicable, the purchasing value of JEA funds;

(d) to foster effective, broad-based competition among vendors purchasing good and services from JEA;

(e) to provide safeguards for the maintenance of the quality and integrity of the JEA Procurement system, and

(f) to ensure JEA's Procurement activities comply with all applicable Florida Statutes.

(4) *Singular-Plural and Gender Rules.* In this Code, unless the context requires otherwise, words in the singular include the plural, and those in the plural include the singular.

(5) *Use of Capitals in Text.* Capitalized terms used in this Code shall have the meanings given to them in the Definitions section of this Code.

(6) *Job Titles.* If a JEA job title used in this Code is changed in the future due to JEA organizational changes, this Code shall be construed by substituting the appropriate successor job title.

(7) *Interpretation:* Where the word "shall" is used, it connotes a mandatory requirement. Where the word "may" is used, it connotes a permissive requirement.

1-102 Application of this Code

(1) *General Application.* This Code, and any amendments to this Code, apply only to Procurement activities, Contracts and Contract Amendments solicited or entered into after the effective date of this Code or an Amendment, as the case may be.

(2) *Application to JEA Procurement.* This Code shall apply to expenditures of public funds under Contract by JEA, irrespective of their source. It shall also apply to the sale or other disposal of JEA property and Supplies.

1-103 Determinations

Written Determinations required by this Code shall be retained in the appropriate official Procurement or Contract file maintained in accordance with promulgated by the Chief Procurement Officer.

1-104 Policy of Continuous Improvement

Suggestions for Improvements. The JEA Board intends for this Code to be a dynamic document comprising the best available public sector Procurement practices. To this end, the Chief Executive Officer encourages employees of JEA and others who deal with the JEA Procurement system to submit to the Chief Procurement Officer any ideas or suggestions for improvements to this Code.

1-105 Jacksonville Small Emerging Business (JSEB) Program; Minority Business Enterprises

JEA shall adhere to the City of Jacksonville's Small Emerging Business (JSEB) Program, or successor city program, in its Procurement procedures. Subject to applicable federal, state and local laws, with the JEA Board's approval, JEA is authorized to implement and to take all actions necessary to administer a race-conscious purchasing and Procurement program to remedy the present effects of past discrimination by JEA, if any, in the awarding of Contracts. Any such race-conscious program implemented by JEA to remedy the present effects of past discrimination by JEA, if any, in the awarding of Contracts must be supported by evidence and based on the required criteria and standards as set forth in applicable federal and state laws.

1-106 General Counsel of the City of Jacksonville

The General Counsel of the City of Jacksonville has the responsibility for providing all legal Services to JEA, including, but not limited to, legal Services relating to Procurement matters. The General Counsel may employ, supervise and terminate assistant counsels to assist with the efficient provision of legal Services for JEA. The General Counsel may authorize JEA to engage outside counsel upon certification by the General Counsel of compliance with the City of Jacksonville's Charter and JEA's authority, and a written finding of necessity by the General Counsel. The General Counsel shall consult with JEA before the General Counsel selects outside counsel. The provision of all outside legal Services to JEA shall be in accordance with the terms of an engagement letter authorized and approved by the General Counsel, including, but not limited to, the scope of the services provided and the maximum indebtedness of JEA's obligations in connection with the engagement.

The provision of legal Services as contemplated by this Section 1-106 shall include all legal related services, e.g., court reporters, expert consultants or witnesses, and Real Estate property appraisers. Legal counsel engaged by JEA shall have the authority to engage such related legal Services only to the extent that the vendor of such related legal Services and the maximum indebtedness of JEA's obligations in connection with such services is approved in by the General Counsel and described in the engagement letter for such legal counsel. The engagement of related legal Services by outside counsel shall not be used as a means to circumvent the competitive bidding requirements or any other provisions of this Code.

1-107 Ex Parte Communication Prohibited

Adherence to procedures that ensure a fair open and impartial Procurement process is essential to the maintenance of public confidence in the value and soundness of the important process of public Procurement. Therefore, except as provided in subsection (3) of this Section 1-107, employees, agents and all other representatives of a Vendor shall be strictly prohibited from communicating, directly or indirectly,

with any of the JEA representatives described in subsection (1) below during a period described in subsection (2) below.

(1) *Persons covered.* The prohibitions of this Section 1-107 shall apply to all JEA Board members, employees, agents, and other representatives if such persons are involved in JEA's Procurement process, or have any decision-making authority with respect to an Award.

(2) *Periods.* Ex Parte Communications are prohibited during the following periods:

(a) from the advertisement of a Solicitation through the Award of a Contract or cancellation of the Solicitation prior to Award; and

(b) from the initiation of a Protest through final resolution of such Protest under this Code.

(3) *Exclusions.* This Section 1-107 shall not prohibit:

(a) communications concerning process and questions regarding a Solicitation addressed to the JEA Procurement staff member designated in a Solicitation to answer questions about the Solicitation, including, but not limited to, communications initiated by such staff member in order to clarify aspects of a Bid, Proposal or Response;

(b) communications during public meetings held in accordance with Florida's Open Meetings Laws, for the purpose of discussing a Solicitation or an evaluation or selection process including, but not limited to, substantive aspects of the Solicitation document (Such public meetings may include, but are not limited to, pre-Bid, pre-Proposal or pre-Response meetings, site visits to JEA's or a Vendor's facilities, interviews or negotiation sessions as part of the selection process, and other presentations by Bidders, Proposers, or Respondents. Exempted communications at such public meetings shall be limited to those consistent with the advertised purpose of the meeting and shall be communicated in a manner which can be heard by all those present at the meeting.);

(c) communications during negotiation sessions with Vendors to the extent exempt under Section 286.0113(2), Florida Statutes, as amended;

(d) Awards Committee and the Procurement Appeals Board at meetings advertised and conducted pursuant to Florida's Open Meetings Laws;

(e) contact by a Vendor currently under Contract with JEA, but only regarding work under that Contract and unrelated to the Solicitation or Protest currently in process; or

(f) communications between a Vendor and the Chief Procurement Officer, or JEA's legal counsel in accordance with the requirements of Article 5 of this Code.

(4) Violation of this Section 1-107 by a Vendor or any of its employees, agents or other representatives may be grounds for any one or more of the following: (i) disqualification of the Vendor from eligibility for an Award; (ii) rescission of any Award to the Vendor; (iii) termination of any Contract with the Vendor; or a decision to suspend or debar the Vendor.

1-108 Retention of Procurement Records

All Procurement records shall be retained, made available and disposed of in accordance with the requirements of all applicable laws, including but not limited to Chapter 119, Florida Statutes (Florida's Public Records Laws), as amended, and the rules and regulations promulgated by the Division of Library and Information Services of the Florida Department of State.

1-109 Collection of Data Concerning JEA Procurement; Annual Vendor Survey

The Chief Procurement Officer shall prepare and maintain statistical Data concerning the Procurement, usage, and disposition of all Supplies and Services, except for Procurements exempt under Section 2-102 of this Code and not procured under a process overseen by the Chief Procurement Officer. Organizational Element Managers overseeing Procurements exempt under Section 2-102 shall furnish such reports as the Chief Procurement Officer may require concerning usage and needs, and the Chief Procurement Officer shall have authority to prescribe forms to be used by such Organizational Element Managers in requisitioning, ordering, and reporting of Supplies and Services.

The Chief Procurement Officer shall annually conduct a survey of actual, interested and prospective Bidders, Proposers, Respondents, and Vendors to obtain feedback on JEA's Procurement process. Such survey shall be on a form approved by the JEA Board and participation in the survey shall be open to actual, interested and prospective Bidders, Respondents, and Vendors. survey topics may include, without limitation, various aspects of JEA's Procurement process such as information transparency and accessibility, preferences, bid submittal packages, evaluations, and Awards. The Chief Procurement Officer shall report the results of such survey to the JEA Board and the JEA Board shall consider such survey results during the JEA Board's biennial review of this Code.

1-110 Record of Procurement Actions

The Chief Procurement Officer shall prepare and deliver a written report to the JEA Board on or before the JEA Board's last regularly scheduled meeting held in each calendar year summarizing all Awards made during the immediately preceding fiscal year. Such written report shall contain at a minimum the following information:

- (a) The number of Awards for the reporting fiscal year;
- (b) A detailed listing of all Awards categorized by service type (e.g., Construction, Professional Services, Supplies, etc.), Award type (e.g., Single Source, Emergency, Request for Proposals, Invitation to Negotiate, piggyback, etc.) and a brief description of each Award containing the Vendor name, Contract amount and Contract term;
- (c) The number of JSEB Awards categorized by service type (e.g., Construction, Professional

Services, Supplies, etc.), Award type (e.g., Single Source, Emergency, Request for Proposals, Invitation to Negotiate, piggyback, etc.), and a brief description of each Award containing the JSEB contractor name, Contract amount and Contract term;

(d) The number of Protests for the reporting fiscal year and the outcome of each Protest (i.e., whether JEA prevailed); and

(e) The annual survey results pursuant to the survey requirement in Section 1-109 of this Code.

After providing such written report to the JEA Board, the Chief Procurement Officer shall deliver the report to the Jacksonville City Council and the Mayor and post the report on JEA's website in a conspicuous manner for the public to view.

ARTICLE 2 - PROCUREMENT AUTHORITY, DESIGNATIONS, AND COMMITTEES

2-101 Procurement Authority and Duties of the JEA Board

Pursuant to Article 21 of the Charter of the City of Jacksonville, the JEA Board shall review and approve this Code and all amendments to this Code. The JEA Board may not delegate its approval of this Code, including any amendments thereto, to the Chief Executive Officer or any other officer, employee or agent of JEA.

The Chief Procurement Officer shall biennially review this Code and JEA's other Procurement procedures and shall report to the JEA Board on the results of such review including any recommendations for changes the Chief Procurement Officer deems appropriate.

2-102 Procurement Code Exemptions

(1) Due to the nature of the following Supplies and Services, such Supplies and Services need not be procured through the Chief Procurement Officer and are not subject to approval by the Awards Committee, but may be procured using Procurement policies and procedures established by an Organizational Element Manager designated by the Chief Executive Officer for that category of Supplies and Services:

- (a) Generation Fuels, Emission Allowances, and Associated Transport;
- (b) Byproducts;
- (c) Purchase or Sale of Electric Energy, Electric Generation Capacity, Electric Transmission Capacity and Transmission Services – Short- and Long-Term Transactions;
- (d) Sale of JEA Owned Transmission and Ancillary Services, including applicable Enabling Agreements;
- (e) Environmental Allowances;
- (f) Real Estate, including easements; and
- (g) Community Outreach Procurements.

The Operational Procedures shall provide more detail concerning the types of Supplies and Services included within the exempt categories of Procurements listed above.

(2) Prior to the Procurement of Supplies or Services by an Organizational Element Manager, the Organizational Element Manager shall establish Procurement policies and procedures for the exempt category of Supplies and Services and obtain all appropriate approvals required by the Operational Procedures.

(3) In the absence of an Organizational Element Manager for a category of Supplies and Services exempt under subsection (1) of this Section 2-102, the Supplies and Services shall be procured through the Chief Procurement Officer in accordance with this Code and Operational Procedures.

(4) Any and all insurance coverage may be awarded through a broker or consultant for those services with ultimate approval by the Awards Committee.

2-103 Appointment and Authority of the Chief Procurement Officer

(1) *Central Procurement Officer of JEA.* The Chief Executive Officer shall appoint a Chief Procurement Officer. The Chief Procurement Officer shall be a full-time, appointed employee of JEA with demonstrated executive and organizational ability. The Chief Procurement Officer shall serve as the central point of contact for JEA Procurement matters.

(2) *Operational Procedures.* The Chief Procurement Officer shall promulgate Operational Procedures governing JEA Procurement activities that are consistent with the provisions of this Code. Whenever practicable, the Operational Procedures shall be updated to incorporate the use of new technologies, best practices, and streamlined procedures for continuous improvement of JEA's Procurement activities. Material revisions to the Operational Procedures shall be approved by the Office of General Counsel prior to the revisions becoming effective.

(3) *Duties.* Except as otherwise specifically provided in this Code, the Chief Procurement Officer duties shall include, but are not limited to:

- (a) supervise and coordinate the Procurement of all Supplies and Services by JEA;
- (b) make Determinations as to what constitutes a minor irregularity in Bids, Proposals and Responses and when Bids, Proposals and Responses should be rejected as unresponsive;
- (c) conduct or coordinate training on JEA's Procurement policies and processes and related matters;
- (d) develop and maintain the standard contract language for Solicitations, Contracts and other documents used in the JEA's Procurement process in consultation with the Office of General Counsel; and
- (e) exercise the duties given to the Chief Procurement Officer in Article 5 of this Code.

2-104 Delegation of Authority by the Chief Procurement Officer

The Chief Procurement Officer may delegate any duty or authority given to the Chief Procurement Officer under this Code in writing to one or more designees.

2-105 Procurement Document Review

The Chief Procurement Officer shall create a process and procedures to ensure all Solicitations and

other documents used in JEA's Procurement process are reviewed to ensure compliance with this Code, the Operational Procedures and all applicable laws and regulations. The process and procedures for review of all Solicitations shall be set forth in the Operational Procedures.

2-106 Awards Committee

(1) *Awards Committee Membership.* The JEA Awards Committee shall consist of three to five Vice Presidents or other senior Officers of JEA appointed by the Chief Executive Officer. Members of the Awards Committee shall serve until their successors have been appointed. Members of the Awards Committee may be removed at any time with or without cause by the Chief Executive Officer. If an Awards Committee member shall cease to be qualified to serve, then the member's term shall be vacant until the Chief Executive Officer appoints a replacement.

(2) *Liaisons.* There shall be three permanent liaisons present at all meetings of the Awards Committee which shall include the Chief Procurement Officer, a representative from the Budget Organizational Element designated by the Chief Executive Officer and a representative from the Office of General Counsel. These liaisons shall not be considered voting members of the Awards Committee for purposes of Florida's Open Meetings Laws.

(3) *Quorum.* The presence of at least three voting members of the Awards Committee shall constitute a quorum. If a quorum is not present or any one of the three Liaisons is not in attendance, the meeting shall be cancelled. If a voting member of the Awards Committee or a liaison is unable to attend a meeting of the Awards Committee, that voting member or liaison may designate an alternate to serve for that meeting, and the alternate shall for all purposes (including, but not limited to satisfying quorum requirements and voting) be considered a member or liaison, as the case may be, for that meeting.

2-107 Awards Committee Procedures

(1) All meetings of the Awards Committee shall be held in accordance with this Code and the requirements of Florida's Open Meetings Laws and shall be properly noticed, and minutes shall be taken. The voting members of the Awards Committee shall not discuss any matter which foreseeably could come before the Awards Committee with another voting member of the Awards Committee unless such discussions take place in a duly noticed meeting held in accordance with Florida's Open Meetings Laws.

(2) Each voting member of the Awards Committee shall have one vote. It shall take a majority of the voting members of the Awards Committee for an item to be approved.

(3) The Chief Procurement Officer shall conduct all meetings of the Awards Committee and shall present each Award item to the Committee for its consideration. The Chief Procurement Officer shall have the authority to determine the presence of a quorum and whether any voting requirement has been met and

shall be responsible for all administrative matters relating to the conduct of the Committee's business including, but not limited to, ensuring that proper notice is given and minutes are taken.

2-108 Duties of the Awards Committee

(1) *Scope of Review.* The Awards Committee shall review each Award item presented to the Committee and shall consider whether the proposed item is in compliance with this Code and in the best interest of JEA.

(2) *Required Approvals.* The following Procurements of Supplies and Services by JEA shall require approval of, or ratification by, the Awards Committee:

(a) Formal Purchases of Supplies and Services by JEA unless exempt under Section 2-102 (Procurement Code Exemptions) or specifically provided otherwise in this Code;

(b) rescissions of Formal Solicitations and rejection all Bids, Proposals and Responses after Bids, Proposals after Bids, Proposals or Responses have been received;

(c) rescissions of Awards previously approved by the Awards Committee;

(d) terminations of Contracts executed in accordance with Awards approved by the Awards Committee;

(e) changes to, and renewals of, any Contracts executed in connection with an Award approved by the Awards Committee if:

(i) the financial impact of the change or renewal exceeds 10% of the amount of the most recent Award approved by the Awards Committee;

(ii) the financial impact of the change or renewal exceeds \$1,000,000;

(iii) the change or renewal causes an Informal Purchase to exceed the threshold for a Formal Purchases set forth in Section 3-101 of this Code;

(iv) the change is an assignment of a Contract; provided, however, that if the assignment arises in connection with a merger, sale of a Vendor or one of its business units or other similar extraordinary event involving the Vendor, the Chief Procurement Officer may authorize the assignment without the approval of the Awards Committee unless the assignment requires Awards Committee approval under the Operational Procedures; or

(v) the change or renewal, in the opinion of the Chief Procurement Officer, changes the Award approved by the Awards Committee in any material respect.

(f) sales of Supplies or Services by JEA that exceed \$300,000, including, but not limited to the sale of any surplus items;

(g) Procurements exempt under Section 2-102 (Procurement Code Exemptions) of this Code if required by the Procurement processes and procedures established by the applicable Organizational Manager; and

(h) ratification of all Formal Purchases procured under Section 3-113 (Emergency Procurements) of this Code.

(3) *Concurrence of Chief Executive Officer.* All approvals and ratifications of the Awards Committee shall be subject to the written concurrence of the Chief Executive Officer.

(4) *Availability of Funding for Procurement Items.* The Awards Committee shall approve Awards items only after receiving confirmation as provided in this Section 2-108(4) that sufficient funds are available for the Award. Prior to presentation to the Awards Committee, each Award item shall be reviewed and approved by the Budget Organizational Element to determine whether sufficient funding is available for the Award. If the Budget Organizational Element is unable to confirm that sufficient funds are available, the senior executive Officer for the Organizational Element requesting the Award may confirm by signature on the Award document that sufficient funding is or is expected to be available in that Organizational Element's Budget.

(5) *Effect of Approval.* Once an Award item is reviewed and approved by the Awards Committee and the Chief Executive Officer, JEA is authorized to proceed with actions to finalize the Procurement of the Supplies or Services consistent with the Award, including but not limited to, execution of a Contract, issuance of a Purchase Order and notice to proceed, and acceptance of delivery of Supplies and Services, subject to lawfully appropriated funds.

ARTICLE 3 – SOURCE SELECTION AND CONTRACT FORMATION

3-101 Formal Purchases

(1) Unless exempt under Section 2-102 of this Code, the following Procurements shall be considered Formal Purchases under this Code:

- (a) the Procurement of Supplies or Services where the estimated aggregate costs and fees for the Procurement exceed \$300,000;
- (b) “Public construction works” required to be competitively awarded under Section 255.20, Florida Statutes, as amended;
- (c) “Electrical work” required to be competitively awarded under Section 255.20, Florida Statutes, as amended; and
- (d) “Professional Services” required to be publicly announced under Section 287.055, Florida Statutes, as amended.

(2) Formal Purchases shall be procured using the process and procedures for Formal Purchases detailed in the Operational Procedures.

3-102 Informal Purchases

(1) Unless exempt under Section 2-102 of this Code, all Procurements not considered to be Formal Purchases under Section 3-101 of this Code shall be considered Informal Purchases.

(2) Informal Purchases may be made in accordance with Operational Procedures.

(3) Procurements shall not be artificially divided to constitute an Informal Purchase under this Section 3-102.

(4) Unless the Procurement is otherwise exempt under this Code, the Operational Procedures for Informal Purchases shall require, at a minimum, the following kind and number of quotations from prospective Vendors:

- (a) one properly documented quotation for Informal Purchases of \$10,000 or less; or
- (b) three properly documented quotations for Informal Purchases exceeding \$10,000; provided, however that if JEA fails to receive 3 quotations despite using all reasonable efforts to obtain 3 quotations, the Chief Procurement Officer may waive this requirement.

(5) Informal Purchases exceeding \$50,000 shall be Posted for 7 to 10 calendar days.

(6) Architectural, engineering, landscape architectural, or registered surveying and mapping services considered “Professional Services” under the CCNA in the amount of \$35,000 or less shall be exempt from competitive bidding under this Code. JEA may procure such services directly without competition.

3-103 Methods of Pre-Source Selection

The Chief Procurement Officer may authorize any one or more of the following Pre-Source Selection Methods:

(1) A Request for Information (“RFI”) is a Pre-Source Selection Method that requests written information about the capabilities of Bidders, Proposers or Respondents and may prepare interested Vendors for participation in future Solicitations. The publication of an RFI does not obligate JEA to make the purchases referred to in the RFI. JEA may use information obtained from RFIs to develop scopes of work for future Solicitations.

(2) A Request for Qualifications (“RFQ”) is a Pre-Source Selection Method used to qualify a pool of two or more Vendors which will be eligible to respond to future Solicitations.

(3) An Intent to Bid is a Pre-Source Selection Method intended to provide notice and information to potential Vendors of JEA’s intent to issue a Solicitation for Supplies or Services. The Intent to Bid may request a response from Bidders confirming their intent to submit a Bid, Proposal or Response to a future JEA Solicitation. The publication of an Intent to Bid does not obligate JEA to make the purchases referred to in the Intent to Bid.

3-104 Methods of Source Selection

Unless exempt under Section 2-102 of this Code, all Formal Purchases shall be procured using one of the following Methods of Source Selection:

- (a) Section 3-105 (Invitation for Bids (IFB));
- (b) Section 3-106 (Request for Proposals (RFP));
- (c) Section 3-107 (Consultants’ Competitive Negotiation Act (CCNA) (Architectural, Engineering, Landscape Architectural, or Surveying & Mapping Services));
- (d) Section 3-108 (Design-Build Contracts);
- (e) Section 3-109 (Construction Management and Program Management);
- (f) Section 3-110 (Multi-Step Competitive Bidding);
- (g) Section 3-111 (Invitation to Negotiate (ITN))
- (g) Section 3-112 (Single Source);
- (h) Section 3-113 (Emergency Procurements);

- (i) Section 3-114 (Public Private Ventures);
- (j) Section 3-115 (Collaborative Procurements);
- (k) Section 3-116 (Joint Projects);
- (l) Section 3-117 (Use of Publicly Procured Contracts);
- (m) Section 3-118 (Pilot Projects);
- (n) Section 3-119 (Use of Reverse Auctions);
- (o) Article 4 (Procurement of Financial Instruments and Services).

The Chief Procurement Officer may elect to use any one of the Methods of Source Selection listed in this Section 3-104 if the Method of Source Selection is deemed by the Chief Procurement Officer to be in the best interest of JEA consistent with the purposes and guiding principles set forth in Section 1-101 of this Code. Notwithstanding the foregoing, the Method of Source Selection shall comply with the requirements of this Code, the provisions of any grant or other funding or cooperative agreements to which JEA is a party, and all applicable laws and regulations, including but not limited to, statutory requirements for the Procurement of Professional Services subject to the CCNA and Construction services meeting certain statutory thresholds. The Operational Procedures shall establish a process and procedures for each Method of Source Selection.

3-105 Invitation For Bids (IFB)

An IFB may be used when JEA is capable of defining the Specifications for a Supply or Service. An Award generally will be made to the Responsive and Responsible Bidder who submits the lowest Bid in a sealed competitive bidding process. Notwithstanding the foregoing, the Chief Procurement may waive minor irregularities in a Bid and may reject all Bids if the Chief Procurement Officer deems such actions to be in the best interest of JEA.

3-106 Request for Proposal (RFP)

An RFP may be used when the Chief Procurement Officer determines that a Solicitation should include selection criteria in addition to price. Various combinations or versions of Supplies or Services may be proposed by a Vendor to meet the Specifications in the RFP.

An RFP may be used to procure Construction Services to the extent permitted by Section 255.20(1)(d)(2), Florida Statutes.

3-107 Consultants’ Competitive Negotiation Act (CCNA) (Architectural, Engineering, Landscape Architectural, or Surveying & Mapping Services)

Architectural, engineering, landscape architectural, or registered surveying and mapping services considered “Professional Services” under the CCNA shall be procured in accordance with the requirements of the CCNA.

3-108 Design-Build Contracts

A Design-Build Contract may be used when the general design and construction requirements are known, but the detailed design and engineering has not been completed. Design-build contracts as defined in Section 287.055(2)(i), Florida Statutes, shall be procured in accordance with the CCNA and the Operational Procedures.

3-109 Construction Management and Program Management

Services may be procured from Construction Management Entities and program management entities in accordance with the provisions of Section 255.103, Florida Statutes. After selection and competitive negotiations, a Construction Management Entity may be required to offer a guaranteed maximum price and a guaranteed completion date or a lump-sum price and a guaranteed completion date as a construction manager “at risk” in accordance with the provisions of Section 255.103, Florida Statutes (a “Construction Manager at Risk” or a “CMAR”).

3-110 Multi-Step Competitive Bidding

The Multi-Step Bidding Method of Source Selection involves a two-phase process in which Bidders first submit proposed revisions to both the commercial and technical terms of the Solicitation. During the second phase of the process, Bidders submit a bid price based on a revised Solicitation issued by JEA. An Award is based solely on the price of the Bid and does not include additional discussions or negotiations of material terms and conditions with Bidders after Bids are received. Multi-Step Competitive Bidding allows JEA to obtain Vendor feedback before finalizing commercial and technical terms to be used in an Invitation for Bids.

3-111 Invitation to Negotiate (ITN)

The Invitation to Negotiate is a Method of Source Selection that allows JEA to directly negotiate with Vendors to obtain best overall value for JEA. Under the ITN, JEA first evaluates initial Proposals with the intent to identify one or more Responsive and Responsible Respondent with which JEA may enter into

one or more rounds of negotiations. Negotiations may result in modifications to the scope of work and terms and conditions of the ITN, submission of revised Bids or Responses, and may conclude with the submission of Best and Final Offers from one or more Vendors. The procedures for conducting an Invitation to Negotiate shall be described in the ITN Solicitation and the Operational Procedures.

ITNs may provide best value for JEA when establishing master contracts or definite delivery contracts for complex Supplies or Services, or when determining or refining scope, methods, or other non-price aspects of a Solicitation.

For each use of the ITN Method of Source Selection, prior to issuance of the ITN, the Chief Procurement Officer shall document the reasons an ITN will produce the best value for JEA compared to an IFB or RFP. In addition to negotiating price, additional reasons must be stated as to why negotiations are needed to realize best value for JEA. Examples of such reasons are “the ITN method allows refining approaches, methods, tools, requirements, deliverables, and systems;” or, “identifying and incorporating value added services offered by Vendors into final requirements.”

3-112 Single Source

A Contract may be awarded for Supplies or Services as a Single Source when, pursuant to the Operational Procedures, the Chief Procurement Officer determines that:

- (a) there is only one justifiable source for the required Supplies or Services;
- (b) the Supplies or Services must be a certain type, brand, make or manufacturer due to the criticality of the item or compatibility within a JEA utility system, and such Supplies or Services may not be obtained from multiple sources such as distributors;
- (c) the Services are a follow-up of Services that may only be done efficiently and effectively by the Vendor that rendered the initial Services to JEA, provided the Procurement of the initial Services was competitive;
- (d) at the conclusion of a Pilot Project under Section 3-118 of this Code, the Procurement of Supplies or Services tested during the Pilot Project, provided the Vendor was competitively selected for the Pilot Project

3-113 Emergency Procurements

In the event of an Emergency, the Chief Procurement Officer may make or authorize an Emergency Procurement, provided that Emergency Procurements shall be made with as much competition as practicable under the circumstances. A written Determination of the basis for the Emergency and for the selection of the particular Vendor shall be included in the Procurement file.

For purposes of this Section 3-113, an “Emergency” means any one of the following:

- (a) a reasonably unforeseen breakdown in machinery;
- (b) an interruption in the delivery of an essential governmental service or the development of a circumstance causing a threatened curtailment, diminution, or termination of an essential service;
- (c) the development of a dangerous condition causing an immediate danger to the public health, safety, or welfare or other substantial loss to JEA;
- (d) an immediate danger of loss of public or private property;
- (e) the opportunity to secure significant financial gain, to avoid delays to any Governmental Entity or avoid significant financial loss through immediate or timely action; or
- (f) a valid public emergency certified by the Chief Executive Officer.

The Chief Procurement Officer shall submit all Formal Purchases made under this Section 3-113 to the Awards Committee for ratification as soon as reasonably practicable after the Formal Purchase is made.

3-114 Public-Private Partnerships

JEA may receive unsolicited proposals or may solicit proposals for a qualifying project and may thereafter enter into a comprehensive agreement with a private entity, or a consortium of private entities, for the building, upgrading, operating, ownership, or financing of JEA’s facilities in accordance with the provisions of Section 255.065, Florida Statutes, as may be amended from time to time. The Operational Procedures shall set forth a process and procedures for the receipt and solicitation of such proposals that meet the requirements of Section 255.065, Florida Statutes, as amended from time to time.

3-115 Collaborative Procurements

JEA may participate in, sponsor, conduct, or administer a Collaborative Procurement for the Procurement of any Supplies or Services or Real Estate with one or more Governmental Entities, utility industry partners, nonprofit organizations or purchasing alliances in accordance with the terms of an agreement entered into between the participants. Such Procurements shall be in accordance with this Code and the Operational Procedures.

JEA shall not participate in, sponsor, conduct, or administer a Collaborative Procurement agreement for the purpose of circumventing this Code.

3-116 Joint Projects

Except where doing so is to circumvent the purpose of this Code, JEA may enter into joint projects with public or utility industry partners, the City of Jacksonville and its other independent agencies, political subdivisions or other Governmental Entities (e.g., the United States Navy, the Florida Department of Transportation, etc.). Joint projects may include, but shall not be limited to, combined water, sewer, drainage and road projects with the City of Jacksonville and Florida Department of Transportation.

Notwithstanding the foregoing, the Procurement of Supplies and Services by JEA in a Joint Procurement shall be consistent with the guiding principles and purposes of this Code set forth in Section 1-101.

3-117 Use of Publicly Procured Contracts

JEA may procure Supplies or Services by using or “piggybacking” on contracts of the City of Jacksonville or its independent agencies, political subdivisions, other city and state or governmental agencies, school board districts, community colleges, federal agencies, Governmental Entities, or public colleges or universities, provided that the contracts of such other entities were competitively procured and the terms and conditions of JEA’s Contract are at least as favorable as the terms and conditions of the contract on which JEA is piggybacking. Formal Purchases using this Method of Source Selection shall be awarded through the Awards Committee.

3-118 Pilot Projects

A Pilot Project allows JEA to procure Supplies or Services on a trial basis in limited amounts and for a limited period of time in order to determine whether to proceed with a Formal Solicitation for the Procurement of such Supplies or Services.

If the estimated aggregate cost of Supplies and Services to be procured during a Pilot Project do not exceed \$100,000, and the term of the Contract for the Pilot Project does not exceed two years, the selection of a Vendor to participate in the Pilot Project is not required to be selected using a competitive solicitation process unless required by applicable law. However, after the conclusion of the Pilot Project, the Supplies or Services evaluated during the Pilot Project shall be procured using one of the other Methods of Source Selection provided in Section 3-104 of this Code.

Where the cost to JEA of the Supplies and Services during the Pilot Project is \$100,000 or more, JEA shall publicly advertise the Pilot Project so that Vendors may submit their qualifications to provide such Supplies or Services. Based on the qualifications submitted by Vendors in response to such public advertisement, JEA will select one or more Vendors to participate in the Pilot Project. Once the Pilot Project

is complete, the Chief Procurement Officer will determine whether JEA will initiate a competitive bidding process to obtain the Supplies or Services.

3-119 Use of Reverse Auctions

When the Chief Procurement Officer determines that procurement by a Reverse Auction is in the best interest of JEA, the Chief Procurement Officer may procure Supplies or Services by Reverse Auction. Reverse Auctions may be used with the following Solicitation types:

- (a) Invitation for Bids (IFB) – With Reverse Auction
- (b) Request for Proposals (RFP) – With Reverse Auction
- (c) Invitation to Negotiate (ITN) – With Reverse Auction

Reverse Auctions are to be used solely for obtaining lowest pricing. Prior to conducting a Reverse Auction, the following must be established for each Bidder, Proposer or Respondent:

- (a) Invitation for Bids – Bidders must provide documentation that they meet the minimum qualifications and any other requirements set forth in the IFB.
- (b) Request for Proposals – The Proposers must provide fully responsive Proposals. JEA shall evaluate Proposals and select at the top three, or more, ranked Proposers to participate in a Reverse Auction to establish pricing.
- (c) Invitation to Negotiate – At the conclusion of the negotiation process for an ITN, where all terms other than price have been agreed, JEA may choose to use a Reverse Auction to establish pricing.

3-120 Form of Contract Documents

The Office of General Counsel shall approve as to form all Contract documents for Formal Purchases. Contract Amendments do not require OGC form approval, unless otherwise provided in the Operational Procedures.

Purchase Orders may be used to form a Contract for Informal Purchases and Formal Purchases when the Chief Procurement Officer determines that a Formal Contract is not necessary. Purchase Orders shall be on a form that incorporates general terms and conditions reviewed and approved by the Office of General Counsel. If a Contract other than a Purchase Order is executed for an Informal Purchase, the Contract does not require form approval by the Office of General Counsel, unless specifically requested by JEA, or unless

such Contract contains terms materially different than JEA's standard terms and conditions, and can be executed as set forth in the Operational Procedures.

In accordance with the JEA Charter, unless otherwise provided in the JEA Charter or by law, all Contracts of any kind, and in any form entered into by JEA, including, but not limited to, Procurement Contracts, Joint Project Contracts, interlocal agreements, and Purchase Orders for Informal Purchases shall contain a provision clearly specifying a fixed, maximum monetary indebtedness of JEA thereunder. Such Contracts may, however, provide for a lesser variable indebtedness of JEA upon a reasonable basis, subject to such fixed, maximum monetary indebtedness.

3-121 Execution of Contract Documents

The Chief Executive Officer shall execute all Contracts. The Chief Executive Officer may delegate to the Chief Procurement Officer the authority to execute Contracts. Contracts and Purchase Orders may be executed by electronic means or by facsimile signatures.

3-122 JEA Project Manager

All Contracts shall provide for a JEA Project Manager who will have the responsibility for overseeing all Work under the Contract and all payments made by JEA under the Contract. The Operational Procedures shall contain additional details concerning the responsibilities of JEA's Project and Contract Managers.

3-123 Continuing Services Contracts

Continuing services contracts, and continuation contracts based on unit prices, may be utilized for recurring Procurements of Supplies and Services that are projected to be made over a period of time. The total amount of all Procurements issued under a continuing services contract shall not exceed JEA's maximum indebtedness set forth in the Contract or the amount as authorized by Florida Statutes for the specific category of work, if any, and shall comply with all other applicable laws.

3-124 Contract Pricing Terms

Contract pricing terms are required in all Contracts and are the basis for payment approvals. The appropriate type of pricing terms will depend on the type of Contract and work being performed. The Operational Procedures may contain additional guidance concerning the type of pricing terms what are appropriate for certain types of Contracts.

ARTICLE 4 - PROCUREMENT OF FINANCIAL INSTRUMENTS AND SERVICES

4-101 [Deleted]

4-201 Types of Procured Financial Instruments and Services

This Article applies to the Procurement of the following financial instruments and Services:

(1) authorized investments pursuant to the electric system bond resolution, the electric system subordinated bond resolution, the St. Johns River Power Park bond resolution, the bulk power supply system bond resolution, water and sewer bond resolution and any future bond resolutions authorized by the JEA Board;

(2) financial instruments and arrangements, including but not limited to interest rate Swaps, Caps, Floors, Collars, Options and related hedging instruments and Forward Supply Agreements, Float Contracts, Guaranteed Investment Contracts (GICs) and related investment instruments used primarily in escrow agreements relating to debt instruments, Bond Insurance, surety policies, letters of credit, other credit enhancement facilities and Liquidity Support (e.g., continuing covenant agreements, standby bond purchase agreements, LOCs);

(3) purchases in the secondary market of JEA debt issued under the resolutions listed above;

(4) debt underwriting Services to underwrite variable or fixed rate bonds, notes, commercial paper or other debt-related financial instruments issued under the above resolutions, subject to a negotiated sale;

(5) debt underwriting Services to underwrite bonds, notes or other debt-related financial instruments issued under the above resolutions, subject to a competitive bid;

(6) bond counsel and related legal Services;

(7) financial advisory Services;

(8) trustee, registrar, paying agent, escrow agent, custody Services, and other similar fiduciary Services;

(9) credit rating agencies Services;

(10) dealers or remarketing agents that market commercial paper, variable rate demand obligations or other variable rate debt issued under the above resolutions;

(11) Securities Lending arrangements;

(12) financial printing Services, including but not limited to official statement printing;

(13) banking Services;

(14) escrow verification Services and accounting Services related to a debt issue or escrow restructuring; and

(15) letters of credit or Revolving Credit Facilities.

- (16) Florida Voluntary Cleanup Tax Credits

4-301 Authorized Investments

(1) *Investments.* Investments shall be procured pursuant to the guidelines outlined in the most recent JEA investment policy approved by the JEA Board and shall be subject to the limitations contained in the bond resolutions under which the investments are to be held. The JEA Board authorizes the Chief Executive Officer or appointed managers designated by the Chief Executive Officer to:

- (a) open and close accounts at registered broker/dealers or banks;
- (b) purchase or sell securities which are authorized investments and sell securities provided to JEA as payment by customers in lieu of cash. The registered broker/dealer or bank is authorized to act upon any orders and instructions whether written or oral with respect to such account, and for the delivery of securities or money therefrom when received from the aforementioned appointed managers. Any of the aforementioned appointed managers may delegate to employees of JEA the authorization to transmit information regarding the execution and/or consummation of a trade described above. Securities transactions shall be approved in writing by any of the aforementioned appointed managers.

(2) *Execution of Certain Other Agreements.* Master Repurchase Agreements and tri-party master Repurchase Agreements and the related custody agreements shall be executed by the Chief Executive Officer or appointed managers designated by the Chief Executive Officer.

4-302 Financial Instruments and Arrangements

(1) *General.* Financial instruments and arrangements include interest rate Swaps, Caps, Floors, Collars, Options and related hedging instruments, Bond Insurance, surety policies, letters of credit, Forward Supply Agreements, float Contracts, Guaranteed Investment Contracts (GIC's), and related investment instruments used primarily in escrow agreements relating to debt instruments and other credit enhancement and Liquidity Support. Due to the dynamic nature of the marketplace for the foregoing, these types of instruments and arrangements shall be procured in a manner as authorized in this Section 4-302 or as authorized by the Chief Executive Officer, or designee authorized by the Chief Executive Officer in writing on a case-by-case basis (a "Designee"), based on prevailing practices in the marketplace for such financial instruments and arrangements. Written approval by the Chief Executive Officer or a Designee of the Procurement methodology shall be obtained prior to the Procurement, if the Procurement methodology is different than the methods specified below. Final approval of the winning Bidder for the various instruments in this 4-302 will be confirmed by the Chief Executive Officer or a Designee.

(2) *Selection.* Suggested methods of procuring the Vendors that provide these instruments and arrangements and/or executing the transactions are:

(a) competitive bid by the Organizational Element directly or through JEA's financial advisor. Such bid may be restricted to the group of Vendors selected to serve as underwriter or otherwise pre-qualified Vendors as recommended in writing by JEA's financial advisor (e.g., top rated banks to provide Liquidity Support for JEA's commercial paper program) for interest rate Swaps, Hedges, Caps, Floors, Collars, Options, Bond Insurance, surety policies, letters of credit, Forward Supply Agreements, float Contracts, Guaranteed Investment Contract (GIC's) and related investment instruments used primarily in escrows agreements relating to debt instruments, other credit enhancements, and Liquidity Support.

(b) Request for Information Solicitation by the Organizational Element or through JEA's financial advisor. Such Request for Information may be limited to the group of Vendors selected to serve as underwriter or other groups of prequalified Vendors as recommended in writing by JEA's financial advisor. If more than one Vendor is selected based on the RFI, a competitive bid shall be utilized among the Vendors selected; and

(c) if considered by the Chief Executive Officer to be in the best interest of JEA and upon the recommendation of JEA's financial advisor, the Chief Executive Officer may negotiate these types of instruments and agreements with one or more Vendors from within JEA's underwriting group or other groups of Vendors as recommended in writing by JEA's financial advisor. (e.g., an interest rate Swap executed in conjunction with a bond issue without being subject to (a) and (b) above). In the case of interest rate Swaps, interest rate Caps, Collars, Options and any related hedging agreements, the execution of such instruments or agreements shall be subject to the authorizations approved by the JEA Board on September 21, 1993, April 5, 1994 and April 19, 1994 and any subsequent approvals. In the case of interest rate Swaps, Caps, Floors, Collars, Options, and related hedging instruments, such agreements (and any related agreements or arrangements, including without limitation related collateral agreements, that are determined necessary) shall be executed by the Chief Executive Officer or a Designee upon confirmation by JEA's financial advisor that the terms and provisions thereof are commercially reasonable and consistent with customary practices in the relevant market for similar agreements.

(3) *Administration.* This Section 4-302 adopts and codifies those resolutions approved by the JEA Board on September 21, 1993, April 5, 1994 and April 19, 1994, and subsequent related resolutions. Any changes to those resolutions shall be approved by the JEA Board in the form of amendments to this Code or through additional resolutions approved by the JEA Board. Bond Insurance, surety policies, and other credit enhancements or Liquidity Support agreements shall be approved by the JEA Board in conjunction with the related debt financing. Vendors selected to serve as counterparties for Bond Insurance, surety policies, letters of credit, Forward Supply Agreements, float Contracts, Guaranteed Investment Contracts (GIC's) and related investment instruments used primarily in escrow agreements relating to debt instruments, other credit enhancements, Liquidity Support, and other similar instruments and arrangements, are subject to a written agreement executed by the Chief Executive Officer or a Designee.

COMMENTARY:

(1) It is expected that sufficient expertise will be available in the underwriting group so that the interest rate Swaps can be competitively bid within the underwriting group. If the JEA staff determines that a market rate will not be obtained from the existing underwriting group, then additional prequalified Bidders may, at the discretion of the Chief Executive Officer, be added to the group.

(2) It is anticipated that interest rate Swaps and other financial instruments outlined in this Section will usually be competitively bid.

4-303 Purchases in the Secondary Market of Debt

(1) Purchases in the secondary market of debt issued under bond resolutions cited in Section 4-201(d) (Types of Procured Financial Instruments and Services) shall be purchased pursuant to the most recent Investment Policy approved by the JEA Board, and any subsequent amendments to that policy approved by the JEA Board. Such purchases are subject to the applicable covenants contained in JEA's bond resolutions; or

(2) Policies, procedures, resolutions or related documents approved by the JEA Board relating to the purchase or retirement of JEA debt.

4-304 Debt Underwriting Services to Underwrite Bonds, Notes or Other Financial Instruments Issued Under Bond Resolutions, Subject to a Negotiated Sale

(1) *Selection.* The Procurement of debt underwriting Services cited in Section 4-201(4) (Types of Procured Financial Instruments and Services) subject to a negotiated sale shall be in accordance with Section 3-106 (Request for Proposals) and does not require the approval of the Chief Procurement Officer. Several underwriters may be selected to perform underwriting and related Services for JEA. A master underwriting agreement shall be executed by the Chief Executive Officer at the end of the Solicitation process and a separate bond purchase agreement with the underwriter(s) shall be executed by an authorized officer of JEA upon the approval of the JEA Board for each sale of debt. Each such bond purchase agreement shall specify, among other customary matters, the fee to the underwriters.

(2) *Negotiations - Sales.* JEA Board-approved resolutions authorize the sale of debt for each System. The Chief Executive Officer or a Designee shall negotiate the sale of bonds, notes or other financial instruments with the designated lead debt underwriter.

4-305 Debt Underwriting Services to Underwrite Bonds, Notes or Other Financial Instruments Issued Under Bond Resolutions, Subject to a Competitive Bid

(1) *General.* Debt underwriting services to underwrite bonds, notes or other financial instruments issued under bond resolutions cited in Section 4-201(5) (Types of Procured Financial Instrument and Services) subject to a competitive bid shall be procured in accordance with (2) below.

(2) *Selection.* Bonds or revenue certificates and refunding bonds or refunding revenue certificates issued pursuant to the JEA Charter if sold by competitive bid shall be sold to the Bidder whose bid produces the lowest true interest cost to JEA. The JEA Board may restrict the Bidders in any sale by pre-qualification or otherwise and may reserve the right to reject any or all bids. Prior to any sale by competitive bid of bonds or revenue certificates, the JEA Board shall cause notice to be given in such manner and at such time as the JEA Board shall determine. Said notice shall specify such matters relating to the bonds or revenue certificates offered for competitive sale as the JEA Board shall determine and shall state the manner in which bids shall be given. The JEA Board may reserve the right to waive any informalities or irregularities if the JEA Board determines that such action is in JEA's best interest. In no event shall said bonds or revenue certificates be sold at a net interest cost to JEA in excess of the legal limit as established by Section 215.84, Florida Statutes, or according to said section as it may from time to time be amended.

4-306 Bond Counsel and Related Legal Services

All legal Services and all legal related Services procured by JEA in connection with any Procurements under this Article 4, including, but not limited to, the Services of bond counsel, shall be procured in accordance with the provisions of Section 1-106.

4-307 Financial Advisory Services

The Procurement of financial advisory Services shall be in accordance with Section 3-106 (Request for Proposals) and does not require the approval of the Chief Procurement Officer.

4-308 Trustee, Registrar, Paying Agent, Escrow Agent, Custody Services relating to fixed rate debt or variable rate and similar fiduciary Services

The Procurement of these Services shall be in accordance with either (1) Section 3-106 (Request for Proposals) and does not require the approval of the Chief Procurement Officer, (2) Section 3-102 (Informal Purchases), (3) competitive bid by Organizational Element or through JEA's financial advisor, such bid limited to a group of Vendors as recommended by JEA's financial advisor, and shall be consistent with any applicable requirements contained in JEA's bond resolutions or (4) if considered by the Chief Executive Officer to be in the best interest of JEA and upon the recommendation of JEA's financial advisor, the Chief Executive Officer may negotiate these types of services and agreements with one or more Vendors as recommended in writing by JEA's financial advisor.

4-309 Credit Rating Agencies Services

Authority to select appropriate additional credit rating agencies, in addition to the nationally recognized credit rating agencies of Fitch Ratings, Moody's Investors Service and Standard and Poor's, to secure debt ratings and related Services for JEA is delegated to the Chief Executive Officer or a Designee. Terms and conditions for such Services shall be negotiated with the credit rating agency selected. Vendors selected must be nationally recognized credit rating agencies that comply with bond resolution requirements and are acceptable to JEA's debt underwriter, remarketing agent or dealer in order to provide marketability for bonds, notes, or other financial instruments issued by JEA. The Chief Executive Officer or a Designee has the authority to delete any of the Vendors providing this Service.

4-310 Dealers or Remarketing Agents that Market Commercial Paper, Variable Rate Demand Obligations (VRDO), or other Variable Rate Debt

Selection. Procurement for dealers or remarketing agents that market commercial paper, VRDO or other variable rate debt issued under bond resolutions cited in Section 4-201(d) (Types of Procured Financial Instruments and Services) shall be by a (1) Request for Information (RFI) by the Organizational Element or JEA's financial advisor; such RFI shall be limited to the group of Vendors selected to serve as debt underwriters and that participate as dealers or remarketing agents in the commercial paper market, VRDO or other variable rate debt markets, or other pre-qualified groups, as recommended in writing by JEA's financial advisor, (2) as outlined in the then current underwriters' agreement. or (3) if considered by the Chief Executive Officer to be in the best interest of JEA and upon the recommendation of JEA's financial advisor, the Chief Executive Officer may negotiate these types of services and agreements with one or more Vendors from within JEA's underwriting group or other qualified Vendors as recommended in writing by JEA's financial advisor.

4-311 Securities Lending Arrangements

(1) *General.* Securities Lending arrangements are authorized pursuant to the electric system and bulk power supply system bond resolutions. On November 2, 1993, the JEA Board approved a resolution outlining methods of procuring and entering into Securities Lending arrangements. Responsible Bidders for Securities Lending arrangements shall be selected pursuant to requirements outlined in the most recent JEA investment policy, as amended. This Section applies to future bond resolutions that authorize Securities Lending transactions.

(2) *Selection.* Suggested methods of procuring the Vendors that provide Securities Lending arrangements are:

- (a) competitive bid by the Organizational Element directly or through JEA's financial advisor.
One or more counterparties shall be selected by the highest bid of security lending income

to JEA that complies with the provisions of the bond resolution under which the securities to be loaned are held;

- (b) Section 3-106 (Request for Proposals) or
- (c) if considered by the Chief Executive Officer to be in the best interest of JEA and upon the recommendation of JEA's financial advisor, the Chief Executive Officer may negotiate these types of services and agreements with one or more Vendors from within JEA's underwriting group as recommended in writing by JEA's financial advisor.

(3) *Administration.* Agreements with one or more counterparties and related custodial agreements shall be executed by the Chief Executive Officer or a Designee. These agreements shall also be approved by JEA's financial advisor and as to form by the Office of General Counsel.

COMMENTARY:

Based on the prevailing market practice at the time of selection, JEA shall determine the method expected to produce the best results for JEA in order to select the Vendors with which to enter into Securities Lending agreements.

4-312 Financial Printing Services, Including but not Limited to Official Statement Printing

Procurement for these Services shall be obtained by one of the following methods:

- (a) competitive bid for official statement printers by the Organizational Element directly or through JEA's financial advisor. JEA shall utilize the printer with the lowest responsible bid; or
- (b) Section 3-102 (Informal Purchases).

4-313 Banking Services

Procurement of these Services shall be in accordance with Section 3-106 (Request for Proposals) and does not require the approval of the Chief Procurement Officer. The JEA Board authorizes the Chief Executive Officer or appointed managers designated by the Chief Executive Officer to:

- (a) open and continue accounts at any bank under Contract with JEA;
- (b) sign and agree to the provisions of said bank's customary corporate signature card, and authorize the said bank to pay or otherwise honor any checks, drafts, or other orders issued from time to time, for debit to said accounts when signed manually or by facsimile impression by any two of certain appointed managers;
- (c) authorize the electronic transfer of funds;
- (d) act on behalf of JEA in all matters and transactions relating to any of its business with the bank, including the withdrawal of property at any time held by the bank for the account of JEA; and

- (e) provide the bank the authority to accept for deposit for the account of JEA, for credit, or for collection, or otherwise, any and all checks, drafts, and other instruments of any kind endorsed by any persons, or by hand stamp impression, in the name of JEA, or without endorsement.

4-314 Escrow Verification Services and Accounting Services Related to a Debt Issue or Escrow Restructuring

Included in JEA's Contract with its external auditors is a provision for the auditors to perform these Services. If these Services can be obtained for a lesser total cost, including internal JEA costs, than provided for in the current Contract with the external auditors, then proposals may be obtained and evaluated pursuant to (1) the provisions of Section 3-106 (Request for Proposals) (2) Section 3-102 (Informal Purchases) or (3) competitive bid by Organizational Element or through JEA's financial advisor.

4-315 Letters of Credit or Revolving Credit Facilities

JEA on occasion has the option to secure certain contractual obligations by providing a Letter of Credit instead of cash payment or deposit. Procurement of such instruments for this purpose shall be limited to the banks selected per Section 4-313 (Banking Services). The Chief Executive Officer is authorized by a JEA Board resolution approved March 7, 1989 to execute individual letters of credit or lines of credit in an amount not to exceed \$5,000,000, and in the aggregate not to exceed \$25,000,000 outstanding at any time. This section does not pertain to letters of credit or lines of credit that provide credit enhancement or Liquidity Support for JEA's demand obligations or commercial paper programs and which are procured under Section 4-302 (Financial Instruments and Arrangements).

In addition, JEA may determine pursuant to the requirements of the JEA Charter to utilize revolving credit facilities for any legal corporate purposes. The Chief Executive Officer shall determine the need for utilization of such instruments up to a maximum of \$25,000,000, and shall execute the applicable documents. The JEA Board shall approve any amount in excess of \$25,000,000. Procurement of such instruments for this purpose shall be by one of the following methods:

- (a) Request for Information or competitive bid by the Organizational Element or through JEA's financial advisor with banks as recommended by the financial advisor,
- (b) Section 3-106 (Request for Proposals) and does not require the approval of the Chief Procurement Officer, or
- (c) if considered by the Chief Executive Officer to be in the best interest of JEA and upon the recommendation of JEA's financial advisor, the Chief Executive Officer may negotiate these types of services and agreements with one or more banks as recommended in writing by JEA's financial advisor.

COMMENTARY:

Maximum limits for letters of credit or Liquidity Support for working capital purposes are in addition to those limits required for letters of credits or Liquidity Support utilized instead of cash payments or deposits.

4-316 Sale of Voluntary Florida Cleanup Tax Credits

Procurement for these Services shall be obtained by one of the following methods:

- (a) Request for Information or competitive bid by the Organizational Element,
- (b) Section 3-106 (Request for Proposals) and does not require the approval of the Chief Procurement Officer, or
- (c) if considered by the Chief Executive Officer to be in the best interest of JEA, the Chief Executive Officer may negotiate these types of services and agreements with one or more firms and approved as to form by the Office of General Counsel.

4-401 [Deleted]

4-402 Reimbursement of Certain Expenditures from Long-term Permanent Financing

United States Treasury regulations in effect upon the effective date of this Code require JEA to make an official written declaration of its intent to incur certain expenditures using temporarily available funds in anticipation of reimbursing such expenditures from the proceeds of debt obligations of JEA. The Chief Executive Officer or Chief Financial Officer or additional a Designee is authorized to declare JEA's intention in writing to reimburse previously incurred expenditures out of proceeds of debt obligations to be issued at a later date. The Chief Executive Officer or a Designee is authorized to execute documents that declare that intention and any additional documents necessary to satisfy the Treasury regulations regarding these transactions.

COMMENTARY:

United States tax regulations do change periodically. Future changes on this issue shall be automatically incorporated to this Code without further approval by the JEA Board.

ARTICLE 5 - ADMINISTRATIVE REMEDIES

5-101 Protests

(1) *Guiding Principles.* It is important that actual or prospective Bidders, Proposers and Respondents have confidence in JEA's Procurement process and procedures. One method of maintaining this confidence is to provide Vendors with an opportunity to file Protests relating to Solicitations and Awards as provided in this Section 5-101.

(2) *Right to Protest.* Any Vendor who is adversely affected by (i) the requirements of a Solicitation or a Determination made in connection with a Solicitation prior to the issuance of an Intent to Award, or (ii) an Award or an Intent to Award may submit a written Protest meeting all of the requirements of subsections (3) and (4) of this Section 5-101. Protests in connection with the requirements of a Solicitation or a Determination made in connection with a Solicitation shall include, but not be limited to, Protests concerning any event or aspect of the Procurement process that followed the issuance of the Solicitation and led to the Award or Intent to Award, Protests relating to the rejection of a Bid, Proposal or Response, including, but not limited to, whether a Bidder, Proposer or Respondent is Responsible or Responsive, and Protests relating to any ranking, scoring, or short-listing of Proposers or Respondents.

(3) *Protest Requirements.* Protests shall:

- (i) be submitted in writing in a letter or email addressed to the Chief Procurement Officer;
- (ii) identify the Solicitation, Award, or Intent to Award, by number and title or other language sufficient to enable the Chief Procurement Officer to identify the Solicitation, Award, or Intent to Award;
- (iii) demonstrate the timeliness of the Protest;
- (iv) state the Protester's complete legal name and legal standing to protest; and
- (v) clearly state with particularity the issues and material facts supporting the Protest, and any legal authority upon which the Protest is based.

Contact information for the Chief Procurement Officer can be found at jea.com under the Procurement section of the website.

(4) *Timeliness.*

- (i) Protests concerning the requirements of a Solicitation, including, but not limited to, the choice of Procurement method, process or procedure, any minimum qualifications or any Specifications, must be received by the Chief Procurement Officer at least five Business Days prior to the date on which Bids, Proposals, or Responses are due to be submitted under the Solicitation.

(ii) All Protests concerning an Award or an Intent to Award, or a Determination made in connection with a Solicitation, must be received by the Chief Procurement Officer within two Business Days after the Posting or other written notification of JEA's decision or intended decision, whichever is earlier. Without limitation, the Posting of the Awards Committee agenda, or JEA's issuance of an Addendum or email to all Bidders, Proposers or Respondents stating its Intent to Award or establishing the short list of Respondents or Proposers, shall constitute notification of an Award or Intent to Award, or other Determination. The period for filing a Protest under this subsection (ii) shall begin at the time of the Posting or other such notification.

(iii) At the time of filing a timely Protest, a Protestant may request an extension of three Business Days after the date its Protest is timely received, in which to provide supplemental Protest materials. Failure to do so or to timely submit the supplemental Protest materials shall constitute a waiver of any right to supplement the Protest. All written information, documents, materials and legal authority the Protestant will provide to the Chief Procurement Officer must be received by the deadline established by the Chief Procurement Officer in a notice provided to the Protestant.

(5) Protests failing to meet the requirements of subsections (3) and (4) shall be rejected and shall constitute a waiver of all rights of the Protestant to file a Protest with respect to that subject matter. A Determination of whether a Protest meets the requirements of subsections (3) and (4) shall be made by the Chief Procurement Officer and is not subject to Protest or Appeal to the Procurement Appeals Board.

(6) JEA shall have the right to cancel, or rescind and re-issue, all Solicitations of any type, at any time until the time JEA executes a Contract under the Solicitation. Such right shall include the right to rescind an Award or an Intent to Award. After a Contract is executed, the terms of the Contract shall govern the parties to the Contract. Such cancelations and rescissions are not subject to Protest.

(7) *Notice of Protest to Affected Third Parties.* Upon receipt of a timely and proper Protest, JEA will notify Vendors known to JEA to be directly affected by the outcome of the Protest. All information, documents, materials and legal authority relating to the Protest that any such Vendor will provide to the Chief Procurement Officer must be received by the deadline established by the Chief Procurement Officer in such notice.

(8) *Protest Hearings.* Protestants shall not be entitled to a hearing of any kind prior to a decision of the Chief Procurement Officer concerning a Protest. The Chief Procurement Officer may conduct a hearing before making a decision. The Chief Procurement Officer shall be entitled to establish procedures for the conduct of any hearing and may set forth some or all of such procedures in the Operational Procedures or in the notice of the hearing. The Chief Procurement Officer shall provide Vendors known to JEA to be directly affected by the outcome of the Protest with a notice of the hearing providing the time, date, location and manner of the hearing.

(9) *Decision by Chief Procurement Officer.* After receipt of a Protest, and following a hearing, if any, and any period of time the Chief Procurement Officer may allow for other interested parties to respond to the Protest, the Chief Procurement Officer shall issue a written decision on the Protest. The written decision shall identify the Protester, recite relevant facts material to the decision, and state the decision and briefly summarize the Chief Procurement Officer's reasoning leading to the decision. In the event the decision is subject to review by the Procurement Appeals Board under this Article 5, the written decision of the Chief Procurement Officer shall inform the Protester of this right with a reference to the Sections of this Code and Operational Procedures outlining the procedures for Appeals.

(10) *Appeal Rights.* Protest decisions made by the Chief Procurement Officer may be appealed to the JEA Procurement Appeals Board pursuant to Section 5-106 below. Notwithstanding the foregoing, a Protester shall not have the right to appeal a Determination by the Chief Procurement Officer about whether a Protest met the requirements of subsections (3) and (4) of this Section.

(11) *Stay of Procurement During Protests and Appeals.* During the pendency of a Protest meeting the requirements of subsections (3) and (4) or an Appeal properly filed under Subsection (10) above, JEA shall not proceed further with the Solicitation or with the Award unless the Chief Procurement Officer, after consultation with the Organizational Element Manager, makes a Determination that proceeding with the Solicitation or Award without delay is necessary to protect substantial interests of JEA.

(12) Nothing in this Article 5 shall affect the ability of the Office of General Counsel to settle Protests pending the outcome of decisions by the Chief Procurement Officer, the Procurement Appeals Board, or the courts.

5-102 Suspensions and Debarments

(1) *Authority.* The Chief Procurement Officer, after consultation with the Organizational Element Manager, shall have authority to suspend or debar a Vendor from consideration for participation in any Procurement undertaken by JEA. A suspension will be for a period of no more than 12 months, unless otherwise stated in the Operational Procedures. A debarment shall be for a period of no less than 13 months and no more than 36 months. Prior to a decision to suspend or debar a Vendor, the Chief Procurement Officer shall provide notice to the Vendor and an opportunity to be heard using a process determined by the Chief Procurement Officer to be fair and reasonable and consistent with this Code and the Operational Procedures.

(2) *Causes for Suspension or Debarment.* In making a decision of whether to suspend or debar a Vendor, and the length of any suspension or debarment, the Chief Procurement Officer shall consider the

seriousness of the facts leading to the suspension or debarment. The causes for suspension or debarment may include, but not be limited to, the following:

(a) conviction of a Public Entity Crime and inclusion on the State of Florida Convicted Vendor List pursuant to Section 287.133, Florida Statutes, as amended;

(b) violation of the terms or requirements of a Contract in a manner that is regarded by the Chief Procurement Officer to be so serious as to justify a suspension or debarment decision, including, but not limited to, the following:

(i) a failure, without good cause, to perform in accordance with a Contract, Specifications, performance levels, warranty provisions, bonding and insurance requirements, or to comply within the time limits provided in the Contract, or

(ii) failure to timely pay subcontractors or materialmen; or

(iii) continued failure to perform or of unsatisfactory performance in accordance with the terms of one or more Contracts, provided that the failure to perform or unsatisfactory performance was not caused by acts beyond the control of the Vendor; or

(c) suspension or debarment by another Governmental Entity including, but not limited to, the City of Jacksonville;

(d) actions by the Vendor that are determined by the Chief Procurement Officer to be fraudulent or in bad faith;

(e) violation of JEA's or the City of Jacksonville's Ethics Code;

(f) violation of provisions of this Code relating to Ex Parte Communications;

(g) existence of delinquent obligations of the Vendor to JEA, including claims by JEA for liquidated damages under any Contract; and

(h) any other cause the Chief Procurement Officer determines to be so serious and compelling as to justify a Vendor's suspension or debarment.

(3) *Effect of Suspension or Debarment.* A Vendor that is suspended or debarred under this Section 5-102 shall be ineligible to participate in any manner in any Procurement undertaken by JEA. The suspension or debarment shall extend to all entities with common ownership or common management as the Vendor that has been suspended or debarred and shall include work undertaken by the debarred Vendor (or such related entity) as a subcontractor or materialman.

(4) *Decision.* The Chief Procurement Officer shall issue a written letter to the Vendor informing it of the decision to suspend or debar that Vendor. The decision shall:

(a) recite relevant facts material to the Chief Procurement Officer's decision;

(b) state the reasons for the decision;

(c) state whether the Vendor is a suspension or debarment;

(d) state the timeframe for suspension or debarment; and

(e) inform the suspended or debarred Vendor involved of any rights to administrative review as provided in this Article 5.

(5) *Finality of Decision.* A suspension or debarment decision by the Chief Procurement Officer shall be final and conclusive, unless appealed.

5-103 Creation of the Procurement Appeals Board

The Chief Executive Officer shall appoint a Procurement Appeals Board composed of a chair and two other members of the Awards Committee who shall serve until their successors are appointed by the Chief Executive Officer. A representative from the Office of General Counsel shall serve as counsel to the Procurement Appeals Board. The chair and two other members of the Procurement Appeals Board must be present to constitute a quorum of the Procurement Appeals Board.

5-104 Procurement Appeals Board Procedures

(1) Meetings of the Procurement Appeals Board shall be held in accordance with Florida's Open Meetings Laws. Accordingly, meetings will be publicly noticed, minutes will be taken, and a member of the Procurement Appeals Board shall not discuss with another member any matter which foreseeably may come before the Procurement Appeals Board unless the discussion occurs in a meeting held in accordance with Florida's Open Meeting Laws.

(2) Each member of the Procurement Appeals Board shall have one vote. A decision by the Procurement Appeals Board shall require a majority vote of the members of the Procurement Appeals Board.

(3) The chair of the Procurement Appeals Board shall have the authority to establish procedures for the Procurement Appeals Board and its meetings, provided that such process and procedures are consistent with this Code and the Operational Procedures.

5-105 Authority of Procurement Appeals Board

The Procurement Appeals Board is authorized to review and make a final decision on any Appeal of a written decision issued by the Chief Procurement Officer under:

- (a) Section 5-101 (Protests) of this Code; or
- (b) Section 5-102 (Suspensions and Debarments) of this Code.

The Procurement Appeals Board is not authorized to intercede in, or hear Appeals relating to, Determinations made in connection with Vendor disputes regarding performance under a Contract, other than

the authority granted to review and make decisions regarding Appeals of Suspensions or Debarments as provided in this Code.

5-106 Appeals

(1) *Appeal Submittal.* A Vendor seeking to appeal a decision of the Chief Procurement Officer under Section 5-101 or 5-102 of this Code shall submit its appeal in writing by letter or email to the Chief Procurement Officer in accordance with the timeliness and other requirements set forth in this Section 5-106 (an “Appeal”). The Appeal shall clearly state the following:

- (a) the grounds, relevant facts and legal authority supporting the Appeal; and
- (b) acts supporting the Vendor’s standing to Appeal.

(2) *Timeliness and Standing.* An Appeal relating to a decision of the Chief Procurement Officer under Section 5-101 of this Code must be received by the Chief Procurement Officer no later than three Business Days after issuance of a written decision by the Chief Procurement Officer. An Appeal relating to a decision of the Chief Procurement Officer under Section 5-102 of this Code must be received by the Chief Procurement Officer no later than 30 days after issuance of a decision by the Chief Procurement Officer under Section 5-102. To have standing to Appeal, a Vendor must have been adversely affected by such decision.

(3) Failure to submit a timely Appeal or to have standing to Appeal under subsections (1) and (2) of this Section 5-106 shall result in dismissal of the Appeal and constitute a waiver of all rights to appeal a decision of the Chief Procurement Officer. A Determination of whether an Appeal meets the requirements of subsections (1) and (2) shall be made by the chair of the Procurement Appeals Board and is not subject to appeal to the Procurement Appeals Board.

(4) All written information, documents, materials and legal authority the Vendor making an Appeal desires to provide to the Procurement Appeals Board must be sent to the Chief Procurement Officer and received by the deadline established by the chair of the Procurement Appeals Board in the notice of hearing provided to the Vendor making the Appeal.

(5) Upon receipt of a timely and proper Appeal, the Chief Procurement Officer will notify Vendors known to JEA to be directly affected by the outcome of the Appeal. Any information, materials and legal authority relating to the Appeal that any such Vendor desires to provide to the Procurement Appeals Board must be received by the deadline established by the Chief Procurement Officer in such notice.

5-107 Review of Appeals

(1) Upon receipt of an Appeal, the Chief Procurement Officer shall forward the Appeal to the Procurement Appeals Board and, if the Appeal is determined by the chair of the Procurement Appeals Board to be proper and timely, a meeting of the Procurement Appeals Board to consider the Appeal shall be scheduled.

(2) Representatives of the Vendor appealing the decision, will be afforded an opportunity to present the merits of the Appeal based solely upon the grounds, facts and legal authority contained in its written Appeal submitted to the Chief Procurement Officer. Representatives of any other Vendors adversely affected by the resolution of the Appeal will also be given an opportunity to be heard and to present information before the Procurement Appeals Board. The Chief Procurement Officer and the Chief Procurement Officer's legal counsel shall also be given an opportunity to respond to the Appeal and the presentations to the Procurement Appeals Board. Formal rules of evidence, including, but not limited to, those found in the Florida Evidence Code, do not apply to presentations made at meetings of the Procurement Appeals Board. The Chair of the Procurement Appeals Board may impose reasonable limitations on the amount of time each Vendor has to present, allow members of the Procurement Appeals Board to ask questions of any party at any time, and may impose other reasonable requirements relating to all presentations and the conduct of the meeting. The chair of the Procurement Appeals Board shall have the authority to make all Determinations and resolve any disputes concerning the process and procedures for Appeals and the conduct of the meeting.

(3) The standard of review used by the Procurement Appeals Board in making its decision shall be whether the Chief Procurement Officer's decision is:

- (i) in conflict with this Code and the Operational Procedures;
- (ii) arbitrary;
- (iii) capricious;
- (iv) dishonest;
- (v) fraudulent;
- (vi) clearly erroneous;
- (vii) illegal; or
- (viii) without any basis in fact or otherwise must be reversed based on applicable law.

(4) The burden shall be on the Vendor appealing the Chief Procurement Officer's decision to demonstrate that the standard of review is met.

(5) A majority vote of the members of the Procurement Appeals Board shall be required to render a decision.

(6) The Procurement Appeals Board shall deliberate at the meeting held to consider the Appeal and announce its decision prior to adjourning the meeting. The decision of the Procurement Appeals Board shall be final and binding. Following the adjournment of the meeting, the Procurement Appeals Board will issue a written decision.