

JEA Procurement Code

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DEFINITIONS

Award is the written approval of the JEA Awards Committee that the Formal Procurement action was in accordance with the JEA Procurement Code and Florida Statutes. Once an Award is approved, JEA will either issue a Purchase Order or execute a Contract with the successful Company.

Awards Committee is the body composed of appointed personnel that approves Procurement actions as defined in this Code.

Best and Final Offer is a Company's final offer following the conclusion of contract negotiations.

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.

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.

Change Order means a written order issued by the JEA Project Manager, after the execution of the Contract authorizing, including but not limited to, additions, deletions, or revisions of the Supplies or Services, or an adjustment in the Contract Price, the Contract Term, or Contract performance. The JEA Project Manager may issue a Change Order without the consent of the Company. A revised Purchase Order shall be issued to the Company after a Change Order is issued. Additionally, a Contract Amendment may be issued to formalize the material changes to the Contract.

Chief Procurement Officer means the person holding the position created in Section 2-203 (Designation and Qualifications of the Chief Procurement Officer) as the head of the central Procurement office of JEA.

Code means the 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.

Company means any person or legal entity that provides or desires to provide Supplies or Services to JEA.

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.

Contract means all types of JEA agreements for the Procurement of Supplies or Services, regardless of what these agreements may be called.

Contract Amendment means any written amendment issued by the Chief Procurement Officer or Designee, after the execution of the Contract formalizing any material revisions to the Contract, including but not limited to, additions, deletions, or revisions to the Supplies or Services, or an adjustment in the Contract Price, the Contract Term, or Contract performance.

Collaborative Procurement means Procurement by, or on behalf of, more than one public entity or Utility Industry Partner and may include Procurements resulting from unsolicited offers.

Cost-Reimbursement Contract means a Contract under which a Company is reimbursed for costs that are allowable and allocable in accordance with the Contract terms and the provision of this Code, and a fee, if any.

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.

Design-Build Firm means a Company that:

- (a) Is certified under Sec. 489.119 F.S. to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or
- (b) Is certified under Sec. 471.023 F.S. to practice or to offer to practice engineering; or
- (c) Is certified under Sec. 481.219 F.S. to practice or to offer to practice architecture; or
- (d) Is certified under Sec. 481.319 F.S. to practice or to offer to practice landscape architecture.

Design Criteria Package means concise, performance-oriented drawings or Specifications of a JEA Construction project.

Design Criteria Professional means a Company that holds a current certificate of registration under Chapter 481 F.S. to practice architecture or landscape architecture or a Company that holds a current certificate as a registered engineer under Chapter 471 F.S. to practice engineering and who is employed by or under contract to JEA for the providing of professional architect services, landscape architect services, or engineering services in connection with the preparation of a Design Criteria Package.

Designee means a duly authorized representative of a person holding a position of authority.

Determination means a finding or decision made in the course of the Procurement process required by the Code.

Emergency means a reasonably unforeseen breakdown in machinery, a threatened termination of an essential service, the development of a dangerous condition, the development of a circumstance causing curtailment or diminution of an essential service or the opportunity to secure significant financial gain, to avoid delays to any governmental entity, or avoid significant financial loss, through immediate or timely action.

Employee means an individual drawing a salary from JEA, whether appointed or not.

Ex Parte Communication means any oral or written communication relative to a Solicitation, evaluation, Award or Contract controversy that occurs outside of an advertised public meeting pursuant to Section 286.011 F.S.

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.

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.

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.

Industry Association means a voluntary association of firms having membership in a not-for-profit corporation with specified common interests.

COMMENTARY:

Examples of Industry Associations are American Public Power Association, Large Public Power Council, Florida Municipal Electric Association, Southern Electric Reliability Council, National Electric Reliability Council, Electric Power Research Institute and the Edison Electric Institute.

Informal Purchases means purchases of Supplies or Services of \$300,000 or less; or electrical Services of \$75,000 or less; or architectural or engineering Services of less than \$35,000.

Invitation for Bids means all documents, regardless of medium, whether attached to or incorporated by reference in Solicitations for bids.

JEA means that independent agency of the City of Jacksonville as defined in Article 21 of the JEA Charter.

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 Chapter 92-341, Laws of Florida, 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 General Counsel, City of Jacksonville or Designee.

Operational Procedures means the Chief Procurement Officer's written instructions 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 —team, area, activity, department, group, business unit, etc.-- that utilizes any Supplies or Services procured under this Code.

Procurement means purchasing, renting, leasing, or otherwise acquiring; or selling, renting, leasing or otherwise disposing of any Supplies or Services. It also includes all functions that pertain to the acquisition or disposal of any Supplies or Services, including description of requirements, selection and solicitation of sources, preparation and Award of Contract.

Procurement Appeals Board means the body comprised of appointed personnel as designated in this Code to hear appeals regarding Procurement issues as designated in this Code.

Procurement Officer means the person designated by the Chief Executive Officer to procure Supplies, Services or Real Estate as set forth in this Code.

Professional Services means Services the value of which are substantially measured by the professional competence of the Company performing them and which are not susceptible to realistic competition by cost of Services alone. Professional Services shall include, but are not limited to, Services customarily rendered by attorneys; certified public accountants; and insurance agents, financial advisors, personnel consultants, systems consultants, and management consultants. For purposes of this Code, Professional Services shall not include Services customarily rendered by architects, landscape architects, professional engineers and registered surveyors.

Project Manager means the JEA Employee assigned responsibility for the successful management of a particular Construction project or Architect-Engineer and Land Surveying Services project. The duties of the Project Manager include Contract administration and making written Determinations with respect thereto.

Public Partner 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.

Purchase Description means the words used in a Solicitation to describe the Supplies or Services to be purchased, and includes Specifications attached to or made a part of the Solicitation.

Qualified Proposers List means the list of *Qualified Proposers for design, engineering, architecture, surveying and other similar work as maintained by Procurement.*

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 Proposals means all documents, regardless of medium, whether attached to or incorporated by reference in Solicitations for proposals.

Request for Qualifications and Statement of Interest means all documents, regardless of medium, whether attached or incorporated by reference, utilized for soliciting information to determine most qualified Design-Build Firms.

Responsible Bidder means a Company that 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.

Responsible Bidder's List means the list of Responsible Bidders for Construction, reconstruction, repair, maintenance and other similar work as maintained by Procurement.

Responsive Bidder means a Company that has submitted a response that conforms in all material respects to a Solicitation.

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 mean the furnishing of labor, time or effort by a Company. This term includes work performed on Construction projects and the receipt, delivery and transmission of electric power, fuel, by-products or thermal energy. This term shall not include employment agreements or collective bargaining agreements.

COMMENTARY:

This definition of Services is very general and includes both Professional Services and other services such as personal, administrative or technical services.

Sole Source means the one justifiable Company that can provide the Supplies or Services.

Solicitation means the document (which may be electronic) issued by the JEA Procurement Department for the Procurement of Supplies or Services.

Solicitation Review Team is the group of JEA staff as further defined in this Code that reviews proposed Solicitations prior to release to the public.

Specifications mean 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.

Supplemental Work Allowance (SWA) means funds established prior to Award of a Contract to be used for revisions to Contract terms, existing work, anticipated unknown work or unanticipated work. The SWA shall be expended through a Contract Amendment approved by the CPO if the SWA results in the increase of the Contract Price.

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

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.

Useful Life Cycle of Supplies means that time beginning with the purchase of the item and ending when the item is no longer of significant use to the JEA.

Utility Industry Partner means a company, approved by the Chief Procurement Officer, with whom JEA may legally engage in at least one of the Collaborative Procurement practices or joint ventures set forth in this Article for a specific Procurement or project.

COMMENTARY:

(1) In order to be a Utility Industry Partner for a given project, the firm must be approved by the Chief Procurement Officer after consultation with the Office of General Counsel for that Procurement or project. The determination that the firm is a Utility Industry Partner for one project does not mean that the firm shall be a Utility Industry Partner on any other Procurement or project.

(2) Florida Power and Light Company and the Southern Company are now Utility Industry Partners for the St. Johns River Power Park and Plant Scherer projects, respectively. Examples of prospective Utility Industry Partners include, but are not limited to: publicly-owned or privately-owned utilities; utility industry trade associations; exempt wholesale generators; cogenerators or small power producers; other entities whose business purpose is the generation or transmission or distribution or the promotion of the efficient use of electricity or water.

(3) Utility Industry Partners may also include Companies that provide JEA Supplies, Services or Real Estate who have contractual relationships with other firms that JEA may use to secure Supplies or Services at prices determined by the Awards Committee to be advantageous and desirable to JEA.

ARTICLE 1- GENERAL PROVISIONS

1-101 Purposes, Rules of Construction

(1) *Interpretation.* This Code shall be construed liberally and applied to promote its underlying purposes and policies.

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

- (a) to simplify, clarify, and modernize the rules governing Procurement by JEA;
- (b) to permit the continued development of this Code and Operational Procedures for flexibility and execution of JEA's value chain activities;
- (c) to provide for increased public confidence and consistency in the procedures followed in JEA Procurement;
- (d) to ensure the fair and equitable treatment of all persons who deal with the JEA Procurement system;
- (e) to provide increased economy in JEA Procurement activities and to maximize, to the fullest extent practicable, the purchasing value of JEA funds;
- (f) to foster effective, broad-based competition within the free enterprise system;
- (g) to provide safeguards for the maintenance of Procurement system quality and integrity, and
- (h) to ensure JEA's Procurement activities comply with Florida Statutes.

(3) *Singular-Plural and Gender Rules.* In this Code, unless the context requires otherwise:

- (a) words in the singular number include the plural, and those in the plural include the singular; and
- (b) words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

(4) *Use of Capitals in Text.* This Code comprises numerous defined terms and position titles. The following convention regarding capitalization of the first letter of each word constituting these terms in the text of the Code has been adopted to aid the reader. In general:

- (a) the first letter of the first word of a defined term, position title or Organizational Element is capitalized if it begins a sentence;
- (b) the first letter of each word of a defined term is capitalized in its definition;
- (c) the terms *Authority*, *Code*, *City Charter*, *JEA*, *JEA Board*, *Office of General Counsel* are capitalized as presented here; and
- (d) names of committees, other boards, state offices, laws and solicitation documents are capitalized.

(5) *Job Titles.* This Code includes JEA job titles that may be changed in the future due to JEA organizational changes. It is intended that the appropriate successor job titles shall be substituted in the Code by the Chief Executive Officer when appropriate.

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

1-102 Application of this Code

(1) *General Application.* This Code applies only to Contracts and Contract Amendments solicited or entered into after the effective date of this Code.

COMMENTARY:

This Code would not retroactively affect rights and remedies under existing Contracts. The Code will affect rights and remedies under existing Contracts that are amended, extended or renewed after the effective date of this Code.

(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. Nothing in this Code or in Operational Procedures promulgated hereunder shall prevent JEA from complying with the terms and conditions of any grant, gift, bequest, or collaborative agreement.

(3) *Application to St. Johns River Power Park Procurement.* Unless otherwise prohibited by the Agreement for Joint Ownership, Construction and Operation of St. Johns River Power Park Coal Units #1 and #2, as amended, and St. Johns River Power Park Procurement policies and procedures, this Code shall apply to St. Johns River Power Park Procurements to the extent adopted by the St. Johns River Power Park Executive Committee.

COMMENTARY:

The last sentence of subsection (2) enables JEA to comply with conditions contained in grants, gifts, bequests, or agreements between JEA and a public or private party (for example, a lessee) specifying requirements for the design, location, construction, or utilization of facilities, including industrial development facilities.

1-103 Effective Date

(1) *Effective Date.* This Code became effective February 1, 1996, when the Procurement organization set forth in Article 2 was established and functioning.

1-104 Determinations

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

1-105 Definitions of Terms Used in this Code have been listed alphabetically in the “Definitions” Section.

1-106 Policy of Continuous Improvement

(1) *Suggestions for Improvements.* The JEA Board has delegated the authority to promulgate this Code to the Chief Executive Officer. The Chief Executive Officer 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 JEA Employees and others who deal with the JEA Procurement system to submit to the Chief Procurement Officer any ideas or suggestions for improvements to the Code.

(2) *Revisions to the Code.* The Chief Executive Officer may approve revisions to the Code provided the revisions are consistent with applicable law, and in keeping with the JEA Board Governance Policy Manual.

1-107 Public Access to Procurement Information

Procurement information shall be a public record to the extent provided in the Florida Public Records Law and the rules and regulations promulgated by the Division of Library and Information Services of the Department of State.

COMMENTARY:

The purpose of this provision is to achieve maximum public access to Procurement information consistent with Florida Statutes. The Florida Public Records Law is codified in Chapter 119 F.S.

1-108 Small and Disadvantaged Businesses

JEA desires to follow the small and/or disadvantaged business ordinances approved by the City of Jacksonville. Jacksonville Ordinance 2004-602 with revised Chapter 126 was approved and enacted August 10, 2004. Any definitions and policies described in any City of Jacksonville ordinances pertaining to small and/or disadvantaged business programs shall be incorporated into this Code. JEA shall adopt and adhere to any such program developed by the City, as currently exists and as may be amended in the future, unless exempted by the proper authority.

1-109 Office of General Counsel of the City of Jacksonville

(1) *Legal Services.* The Office of General Counsel shall serve as legal counsel and provide necessary legal Services to the JEA Board, the Chief Procurement Officer, the Solicitation Review Team, the Awards Committee, the Procurement Appeals Board and Procurement Officers regarding Procurement matters.

(2) *Contracted Legal Services.* Contracts for outside legal counsel must be awarded and approved pursuant to the provisions of Section 21.07(e) of the JEA Charter and in accordance with Section 2-202 (Procurements Exempted from Competitive Solicitation) of the Code.

COMMENTARY:

The Office of General Counsel should serve as the legal counsel to advise and assist JEA on legal matters. Such legal counsel should designate such assistants as may be deemed necessary to act as advisors to personnel in JEA. In addition, the legal counsel or assistant should provide prompt legal advice to their clients as each occasion demands, so that the Procurement process, where speed is so often necessary, can move ahead promptly.

1-110 Ex Parte Communication Prohibited

(1) *Policy.* Ex Parte Communication denies any Company submitting a bid or proposal fair, open and impartial consideration. Adherence to procedures that ensure fairness is essential to the maintenance of public confidence in the value and soundness of the important process of public Procurement. Therefore, any Ex Parte Communication between a Company (or its employees, agents or representatives) and JEA (its members, Employees, agents, or representatives, other than the Chief Procurement Officer or Designee or JEA's legal counsel) is strictly prohibited.

(2) *Periods.* Ex Parte Communication is prohibited during the following periods:

- (a) from the advertisement of a Solicitation through the award of a Contract; and
- (b) from the initiation of a protest of an Award or Contract through resolution of such protest.

(3) *Exclusions.* This requirement shall not prohibit:

- (a) public meetings called or requested by JEA and attended by bidders or proposers for the purpose of discussing a Solicitation, evaluation or selection process including, but not limited to, substantive aspects of the Solicitation document. Such meetings may include, but are not limited to, pre-bid or pre-proposal meetings, site visits to JEA's, bidders' or proposers' facilities, interviews/negotiation sessions as part of the selection process, and other presentations by bidders or proposers, all of which are requested by JEA. Such authorized meetings shall be limited to topics specified by JEA.
- (b) the addressing of the Awards Committee and the Procurement Appeals Board at public meetings advertised and conducted pursuant to Section 286.011 F.S.;
- (c) the filing and prosecution of a written protest to any proposed Award to be made pursuant to the Solicitation, evaluation and selection process, which filing and prosecution shall give notice to all bidders or proposers. Protest proceedings shall be limited to open public meetings, with no Ex Parte Communications outside those meetings;
- (d) contact by Company currently under Contract with JEA, but only in regard to any work performed on projects unrelated to the Solicitation and which are currently in process;
- (e) communications between Company and Chief Procurement Officer or Designee, or JEA Legal Counsel in accordance with the requirements of any administrative remedies process;

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- (f) questions to the JEA Purchasing Agent, referenced in the Solicitation, regarding matters pertaining to a Solicitation during the time period allotted for Solicitation questions.

1-111 Retention of Procurement Records

All Procurement records shall be retained, made available and disposed of in accordance with the requirements of the Florida Public Records Law and the rules and regulations promulgated by the Division of Library and Information Services of the Department of State.

1-112 Collection of Data Concerning JEA Procurement

(1) *Chief Procurement Officer.* The Chief Procurement Officer shall prepare and maintain statistical Data concerning the Procurement, usage, and disposition of all Supplies and Services, except for Procurements by Procurement Officers in accordance with the requirements of Section 2-201 (Procurement Code Exemptions) and shall employ such trained personnel as may be necessary to carry out this function. Organizational Element managers 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 in requisitioning, ordering, and reporting of Supplies and Services.

(2) *Procurement Officers.* As directed by the Chief Executive Officer, Procurement Officers operating under the requirements of Section 2-201 (Procurement Code Exemptions) shall prepare and maintain statistical Data concerning the Procurement, usage, and disposition of all Supplies and Services procured and shall employ such trained personnel as may be necessary to carry out this function.

COMMENTARY:

The Chief Procurement Officer and Procurement Officers should endeavor to perform assigned duties in a manner that will ensure that the Supplies and Services procured meet the requirements of JEA. To achieve this goal, the Chief Procurement Officer, Procurement Officers and Organizational Element managers should be free to make recommendations to each other. A close and cooperative relationship should be maintained.

1-113 Record of Procurement Actions Taken Under Section 3-111 (Sole Source Procurements) and Section 3-113 (Emergency Procurements)

(1) *Contents of Records.* The Chief Procurement Officer shall maintain a record listing all Formal Purchases made under Section 3-111 (Sole Source Procurements) and Section 3-113 (Emergency Procurements). The record shall contain:

- (a) each Company's name;
- (b) the amount and type of each Contract;
- (c) a listing of the Supplies and Services procured under each Contract; and
- (d) the reason or justification for the Procurement.

(2) *Submission to JEA Board.* A copy of such records listing all Formal Purchases made under Section 3-111 (Sole Source Procurements) and Section 3-113 (Emergency Procurements) shall be submitted to the JEA Board on a quarterly basis.

1-114 Record of Procurement Appeals Board Decisions Taken Under Section 5-301 (The Procurement Appeals Board)

(1) *Submission to JEA Board.* Procurement Appeal Board decisions made under Section 5-301 (The Procurement Appeals Board) shall be submitted to the JEA Board on a quarterly basis.

ARTICLE 2 - PROCUREMENT AUTHORITY, DESIGNATIONS, AND COMMITTEES

2-101 JEA Procurement Policy

Pursuant to the authority granted to the JEA Board under Section 21.09 of the JEA Charter, the JEA Board has authorized the Chief Executive Officer to promulgate the JEA Procurement Code, as long as the Code is in keeping with all laws, and in compliance with the JEA Board Governance Manual.

COMMENTARY:

The JEA Board passed the JEA Board Governance Manual on February 16, 2010, which, in policy 2.11, authorized the Chief Executive Officer to develop procurement policies and procedures.

2-102 Procurement Authority and Duties of the JEA Board

The JEA Board has authorized the Chief Executive Officer to promulgate this JEA Procurement Code. The JEA Board shall consider and decide matters of policy regarding the overall Procurement practices for JEA, as set forth in Policy 2.11 of the Board Governance Manual, which was adopted by the Board on February 16, 2010. The JEA Board shall have the power to audit and monitor the implementation of the requirements of this Code, but shall not exercise authority over the Award or administration of any particular Contract, or over any dispute, claim, or litigation. The JEA Board shall have the same authority over litigation relating to procurement matters as it would have over any other type of litigation.

2-103 Centralization of Procurement Authority

In accordance with the provisions of the JEA Charter and the JEA Board Governance Manual, all rights, powers, duties, and authority relating to the Procurement of Supplies and Services and Real Estate, and the management, control, sale and other disposal of Supplies and Services and Real Estate, are vested in the Chief Executive Officer or the Chief Procurement Officer, as provided in this Code.

2-201 Procurement Code Exemptions

(1) *Types of Procurements.* The following Supplies and Services need not be procured through the Chief Procurement Officer, but shall nevertheless be purchased, leased, sold or otherwise disposed of by the appropriate Organizational Element manager subject to the requirements of Subsections (2) and (3) below:

- (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;
- (g) Community Outreach Procurements.

(2) *Procurements by Managers of Organizational Elements.* Prior to Procurement of Supplies or Services or Real Estate by a manager of an Organizational Element:

- (a) the Chief Executive Officer shall approve both the directives governing the Procurement, and shall designate the Procurement Officer responsible for a specific area of Procurement.

(3) *Procurement Through the Chief Procurement Officer.* In the absence of a Procurement Officer designated by the Chief Executive Officer and Procurement Directives, the Supplies and Services listed in this section shall be procured through the Chief Procurement Officer in accordance with this Code and Operational Procedures.

(4) *Actions by the Chief Executive Officer.* The Chief Executive Officer may exempt other types of Procurement or may revoke the exempted status of any type of Procurement. The Chief Procurement Officer shall maintain a current list of the types of Procurements that are exempted.

2-202 Procurements Exempted from Competitive Solicitation

The following Services and/or Supplies are exempt from the Code's bidding requirements and may be awarded without competition:

(1) Procurement of attorney and legal related services, which shall include, but not be limited to, court reporters, consultants, and Real Estate property appraisers. Procurement of attorney and legal related services shall be conducted by the Office of General Counsel pursuant to the JEA Charter.

(2) Procurement of Professional Services, as defined in Florida Statute 287.055 for a project where the basic construction cost of which is not in excess of the threshold amount provided in Florida Statute 287.017 for CATEGORY FIVE, which is currently \$325,000.00, or for a planning or study activity

when the fee for Professional Services is not in excess of the threshold amount provided in Florida Statute 287.017 for CATEGORY TWO which is currently \$35,000.00.

(3) Procurements of authorized investments, investment management firms, trustee, actuarial, advisory, and custody services that are approved by the St. John River Power Park Pension Committee.

(4) Procurements under \$200,000 or less and fall under the JEA Cost Participation Policy.

(5) Property and casualty insurance, and Human Resource Benefits may be Awarded through the broker/consultant for those services with ultimate approval by the Awards Committee.

2-203 Designation and Qualifications of the Chief Procurement Officer

The Chief Executive Officer shall designate a Chief Procurement Officer. The Chief Procurement Officer shall be a full-time, appointed JEA Employee with demonstrated executive and organizational ability.

2-204 Authority of the Chief Procurement Officer

(1) *Central Procurement Officer of JEA.* The Chief Procurement Officer shall serve as the central point of contact for JEA Procurement Actions.

(2) *Power to Promulgate Operational Procedures.* Consistent with the provisions of this Code, the Chief Procurement Officer shall promulgate Operational Procedures governing JEA Procurement activities. 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) *Effect of Operational Procedures on Existing Contracts Rights.* Operational Procedures shall apply to Contract Amendments (including extensions and renewals) entered into after the effective date of this Code. No Operational Procedure shall change any commitment, right, or obligation of JEA or a Company under a Contract in existence on the effective date of such Operational Procedure.

(4) *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 as needed by JEA;
- (b) make Determinations as to what constitutes a minor irregularity in bids and when bids or proposal should be rejected;
- (c) conduct or coordinate training as needed;
- (d) develop and maintain the standard contract language for procurements in consultation with the Office of General Counsel.

2-205 Delegation of Authority by the Chief Procurement Officer

The Chief Procurement Officer may delegate authority in writing to Designees.

2-301 Creation of the Solicitation Review Team

The Chief Procurement Officer shall create a Solicitation Review Team to ensure all Formal Solicitations are reviewed to ensure, at a minimum, that the following items are properly defined and included in Solicitation:

- (1) Price and Payments;
- (2) Performance requirements;
- (3) Warranties, insurance, and indemnification;
- (4) Term and Termination;
- (5) Scope of Work;
- (6) Audit Requirements;
- (7) Minimum Qualifications; and
- (8) JSEB Requirements.

2-302 Solicitation Review Team Procedures

The Chief Procurement Officer shall promulgate Operational Procedures that, to the fullest extent possible, will provide for the thorough consideration and expeditious discharge of the Solicitation Review Team's duties. The Solicitation Review Team shall not take votes or recommend policy for JEA. To ensure competitive fairness, its meetings shall not be open to the public.

2-401 Creation of the Awards Committee

- (1) There is hereby created an Awards Committee composed of:
 - (a) any three to five Vice Presidents/General Managers, or Chief Officers who the Chief Executive Officer may appoint as voting members to perform the duties of the Awards Committee;
 - (b) the Chief Procurement Officer as a non-voting member shall be the chair of the Awards Committee meeting and will present the Procurement items at the meeting after obtaining approval from the Budget Organizational Element;
 - (c) a representative from the Budget Organizational Element, designated by the Chief Executive Officer, shall serve as a non-voting member of the Awards Committee with the primary role of providing information to and answering inquiries from the public and any Awards Committee members related to the Budget endorsement of the Award amount and other related financial matters; and

(d) a representative from the Office of General Counsel as a non-voting member who shall serve as counsel to the Awards Committee.

(2) *Quorum.* The presence of at least three (3) voting members of the Awards Committee at a meeting shall constitute a quorum. If the Chief Procurement Officer or his/her designee, the Budget Organizational Element representative or his/her designee, or a representative from the Office of General Counsel cannot be in attendance, the meeting shall be cancelled.

COMMENTARY:

The members of the Awards Committee may designate alternates upon permission of the Chief Procurement Officer. The Chief Procurement Officer may also designate an alternate to appear at the meeting in the event of the Chief Procurement Officer's unavailability.

Although the Chief Procurement Officer is a nonvoting member of the Awards Committee, the Chief Procurement Officer is responsible for approving the method of source selection for all items prior to their presentation to the Awards Committee.

2-402 Terms and Qualifications of Members of the Awards Committee

Members of the Awards Committee shall be appointed personnel of JEA and shall serve indefinite terms at the pleasure of the Chief Executive Officer.

2-403 Awards Committee Procedures

(1) The Awards Committee is subject to the Florida Sunshine Law, and all meetings of the Awards Committee shall be properly noticed, and minutes shall be taken. In addition, the voting members of the Awards Committee shall not discuss any matter which foreseeably could come before the Awards Committee with another member unless in a duly noticed meeting.

(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.

2-404 Duties of the Awards Committee

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

(2) *Actions.* The Awards Committee shall, subject to Chief Executive Officer approval, make recommendations to approve, modify or reject Awards items. An Award items are required for the following:

- (a) approving new Contracts;
- (b) rescinding Solicitations after bids have been received;
- (c) rejection of all bids;
- (d) rescinding Awards previously approved by the Awards Committee;
- (e) terminating Contracts previously approved by the Awards Committee;

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- (f) approving and authorizing Contract Amendments, Change Orders, contract renewals that exceed 10% of the previous Awarded total contract amount;
 - (g) approving Change Orders exceeding \$1,000,000;
 - (h) approving Change Orders to Informal purchases that increase the contract amount above the approved Informal threshold;
 - (i) approving sales agreements that exceed the Informal purchase threshold;
 - (j) approving procurement actions when required for exempted procurement items in accordance with procurement directives (Section 2-201(2) Procurement Code Exemptions);
 - (k) ratifying procurement actions both Formal and Informal purchases; or
 - (l) approving all Sole Source (Section 3-111) and Emergency (Section 3-113) procurements

(3) *Concurrence of Chief Executive Officer.* The actions of the Awards Committee shall be implemented upon the written concurrence of the Chief Executive Officer. JEA shall not execute contracts where the intended expenditures for a specific fiscal period exceed the budget authorization for that period, nor shall JEA execute contracts that in the aggregate exceed the budget authorizations and projections for the same aggregate period.

COMMENTARY:

- (1) The requirement for written concurrence includes concurrence by electronic means.

Additionally, procurement actions that combine the procuring of services and the selling of JEA surplus items, (e.g., demolition of excess power generation assets), shall also require Awards Committee approval when the Transaction Value is greater than Informal Purchases threshold. The Transaction Value is defined as the value of the demolition services and the surplus material.

(4) *Procurement Actions which are Exempted from Awards Committee Review.*

- (a) Procurement actions set forth in Section 3-102 (Informal Purchases)

(5) *Exemptions by Directives.* The directives developed under the provisions of Section 2-201(2) (Procurement Code Exemptions) may exempt Procurement actions from Awards Committee review and approval.

(6) *Availability of Funding for Procurement Items.* Prior to presentation to the Awards Committee, each Award item shall be reviewed and approved by either the JEA or SJRPP Budget Organizational Element to determine whether sufficient funding is available for the Contract or Agreement. If the Budget Organizational Element is able to validate that sufficient funds are, or are expected to be available for the Award item, they will provide the JEA Budget endorsement at the Awards Committee meeting. If the Budget Organizational Element is unable to validate that sufficient funds are available, the operational Vice President/ General Manager or Chief Officer may certify by signature on the Award document that sufficient funding is or is expected to be available in the appropriate Departmental Budget for the expenses. In these cases, the Award Item may then be presented to the Awards Committee for consideration and the operational Vice President/ General Manager or Chief Officer's endorsement will

serve as the approval in place of the Budget Organizational Element approval pursuant to Article 2-401(1)(c).

(7) *Effect of Approval.* Once the items are reviewed and approved by the Awards Committee and the Chief Executive Officer, JEA is authorized to proceed with required actions to finalize the procurement of the Supplies or Services, including but not limited to, execution of Contracts, issuance of Purchase Orders and notices to proceed, and acceptance of delivery of Supplies and Services, subject to lawfully appropriated funds.

2-501 Creation of the Procurement Appeals Board

There is hereby established a Procurement Appeals Board composed of a chairperson and at least two other members. All members shall be designated by the Chief Executive Officer. A representative from the Office of General Counsel shall serve as counsel to the Procurement Appeals Board.

COMMENTARY:

The Procurement Appeals Board can provide expeditious and inexpensive procedures for the resolution of controversies.

2-502 Terms and Qualifications of Members of the Procurement Appeals Board

Members of the Procurement Appeals Board shall be a JEA Vice President/ General Manager or Chief Officer and shall serve indefinite terms at the pleasure of the Chief Executive Officer. At the discretion of the Chief Executive Officer, the Procurement Appeals Board may be a standing or *ad hoc* committee.

2-503 Procurement Appeals Board Procedures

(1) The Chief Procurement Officer shall promulgate Operational Procedures that, to the fullest extent possible, will provide for the expeditious resolution of controversies. The Procurement Appeals Board is subject to the Florida Sunshine Law, and all meetings of the Procurement Appeals Board shall be properly noticed, and minutes shall be taken. In addition, the voting members of the Procurement Appeals Board shall not discuss any matter which foreseeably could come before the Procurement Appeals Board with another member unless the discussion occurs in a duly noticed meeting.

(2) Each voting member of the Procurement Appeals Board shall have one vote. It shall take a majority of the voting members of the Procurement Appeals Board for an action to be approved.

2-504 Duties of the Procurement Appeals Board

The duties and operation of the Procurement Appeals Board are set forth in Article 5, Administrative Remedies and procedure provided in Appendix A.

ARTICLE 3 – SOURCE SELECTION AND CONTRACT FORMATION

3-101 Formal Purchases

(1) *Formal Purchase.* A Formal Purchase is the procurement of Supplies or Services where the estimated costs or fees exceed the following thresholds:

- (a) Construction Services – \$300,000 as required under Section 255.20, F.S.;
- (b) Electrical Services – \$75,000 as required under Section 255.20, F.S.;
- (c) Architectural, Engineering, Landscape Architectural, or Surveying and Mapping Services:
 - i. Where the estimated cost for the basic construction of a project exceeds Section 287.017, Florida Statutes, for CATEGORY FIVE, which is currently \$325,000.00; or
 - ii. Where the estimated fees for a planning or study activity exceeds Section 287.017, Florida Statutes, for CATEGORY TWO, which is currently \$35,000.00; and
- (d) All other Supplies and Services – \$300,000 (to be consistent with Section 3-101(a)(i) of this Code).

(2) If a purchase is determined to be a Formal Purchase, specific procedures which are further detailed in the JEA Operational Procedures.

3-102 Informal Purchases

(1) *Conditions for Use.* Informal Purchases may be made in accordance with Operational Procedures. Procurement requirements shall not be artificially divided so as to constitute an Informal Purchase under this Section.

(2) *Competitive Pricing.* Unless the Procurement is otherwise exempted by this Code, the Operational Procedures for Informal Purchases shall require, at a minimum, the following kind and number of quotations from prospective suppliers:

- a. one properly documented quotation for Procurements of \$10,000 or less; or
- b. three written or properly documented quotations for Procurements exceeding \$10,000 but not exceeding the Formal Purchase threshold amounts stated in 3-101 (Formal Purchases).

(3) If the purchase is over \$50,000 it shall be publicly advertised for 7 to 10 days.

3-103 Methods of Pre-Source Selection

If found to be in the best interest of JEA, the Chief Procurement Officer or Designee shall authorize the use of Pre-Source Selection methods which are as follows:

(1) *Request for Information (RFI)*. A Request for Information (RFI) may request written information about the capabilities of bidders and prepare interested parties for participation in future Solicitations. The publication of a RFI notice does not obligate JEA to make the purchases referred to in the RFI.

(2) *Intent to Bid*. An Intent to Bid is intended to provide information to all bidders of JEA's intent to solicit a bid for Supplies or Services. The Intent to Bid may request a response from Bidders confirming their intent to submit a bid in response to a future JEA Solicitation. The publication of an Intent to Bid notice does not obligate JEA to make the purchases referred to in the Intent to Bid.

3-104 Methods of Source Selection

All JEA Contracts shall be awarded through a competitive sealed bidding process, pursuant to Section 3-105 (Invitation for Bids), unless otherwise provided in the following Section(s):

- (a) Procurement Directives issued pursuant to Section 2-201(2) (Procurement Code Exemptions);
- (b) Section 3-109 (Multi-Step Competitive Bidding);
- (c) Section 3-106 (Request for Proposals);
- (d) Section 3-107 (Procurements subject to the Consultant's Competitive Negotiation Act);
- (e) Section 3-108 (Competitive Selection Procedures for Design-Build Services);
- (f) Section 3-110 (Invitation to Negotiate);
- (g) Section 3-102 (Informal Purchases);
- (h) Section 3-111 (Sole Source Procurements);
- (i) Section 3-112 (Procurement of Standard, Proprietary and Original Equipment Manufacturer Items);
- (j) Section 3-113 (Emergency Procurements);
- (k) Section 2-202 (Procurements Exempted from Competitive Solicitation);
- (l) Article 4 (Procurement of Financial Instruments and Services);
- (m) Article 3-114 (Public Private Ventures);
- (n). Article 3-115 (Collaborative Procurement Agreements);
- (o) Article 3-116 (Joint Projects); or
- (p) Article 3-117 (Use of Publicly Procured Contracts).

3-105 Invitation For Bids (IFB)

(1) *Conditions for Use*. An IFB is the preferred method for acquiring Supplies and Services. Contracts awarded using this methodology shall be awarded based on price through a competitive sealed bidding process except as otherwise provided in Section 3-104 (Methods of Source Selection). An IFB shall be used when JEA is capable of precisely defining the Specifications for a Supply or Service. An

Award of Contract is based solely on the dollar amount of the Bid and does not include discussions or negotiations of material terms and conditions with the bidders.

COMMENTARY:

(1) IFBs are used when JEA is seeking the lowest price.

3-106 Request for Proposals (RFP)

(1) *Conditions for Use.* This bidding methodology shall be utilized if the Chief Procurement Officer or Designee determines that it is advantageous to JEA. JEA may use a RFP when (i) the evaluation criteria include quality measures in addition to price, or (ii) the Specifications cannot be precisely defined. Various combinations or versions of Supplies or Services may be proposed by a Company to meet the Specifications of the RFP document.

(2) This Section does not apply to the procurement of professional architectural, engineering, landscape architectural or surveying and mapping services. These types of services shall be obtained in accordance with Section 3-107 (Procurements subject to the Consultant's Competitive Negotiation Act) of this Code.

COMMENTARY:

(1) RFP Awards are based on quality and price, and allow greater flexibility in negotiating contract terms and conditions.

3-107 Consultant's Competitive Negotiation Act (CCNA) (Architectural, Engineering, Landscape Architectural, Or Surveying & Mapping Services)

(1) *Conditions for Use.* Professional architectural, engineering, landscape architectural, or surveying and mapping services shall be obtained in accordance with Florida Statutes 287.055, entitled "Consultant's Competitive Negotiation Act"(CCNA).

COMMENTARY:

(1) The CCNA process is required for these types of services and selection is based on quality measures only.

3-108 Competitive Selection Procedures for Design-Build Services

(1) *Conditions for Use.* JEA shall Award a Design-Build Contract in accordance with Section 287.055(9), Florida Statutes, or the Operational Procedures. The Operational Procedures allow the Award of a Design-Build Contract by the use of a competitive proposal selection process.

COMMENTARY:

(1) Design-Build is used in cases where the general design and construction requirements are known, but the detailed design and engineering is not completed, and this approach has been determined to be in the best interest of JEA.

3-109 Multi-Step Competitive Bidding

(1) *Conditions for Use.* Multi-Step Bidding 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, the bidder shall submit a bid price based on a revised Solicitation. 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 the Award is approved.

COMMENTARY:

(1) Multi-Step Competitive Bidding provides flexibility for JEA to define commercial and technical terms after vendor feedback is obtained during the first step of the Solicitation process.

3-110 Invitation to Negotiate

(1) *Conditions for Use.* The Invitation to Negotiate is a Solicitation which in which JEA identifies one or more responsive Companies with whom JEA may request revised bids or responses, culminating in a Best and Final Offer, from which JEA will make its Award decision. The procedures for conducting an Invitation to Negotiate shall be described in the Operational Procedures.

COMMENTARY:

(1) This sourcing method provides added flexibility for JEA to directly negotiate with vendors during the IFB or RFP process to obtain the best overall pricing and service levels.

3-111 Sole Source Procurements

(1) *Conditions for Use.* A Contract may be awarded for Supplies or Services as a Sole Source when, pursuant to the Operational Procedures, the Chief Procurement Officer or Designee determines that:

- (a) there is only one justifiable source for the required Supplies or Services; or
- (b) a service is a follow-up of Services that may only be done efficiently and effectively by the Company that rendered the initial Services to JEA, provided the initial procurement was competitive.

3-112 Standard, Proprietary & Original Equipment Manufacturer Procurements

(1) *Conditions for Use.* A Contract may be awarded for Supplies or Services with limited or no competition when the Supplies or Services:

- (a) have been selected as a JEA standard in the course of a standards program or through the action of a standards committee (standard); or
- (b) must be a certain type, brand, make or manufacturer (proprietary); or
- (c) must be obtained from the original equipment manufacturer, manufacturer's representative or a distributor authorized by the original equipment manufacturer because of the

criticality of the item or compatibility within the JEA system (original equipment manufacturer).

3-113 Emergency Procurements

(1) *Conditions for Use.* Notwithstanding any other provision of this Code, the Chief Procurement Officer or Designee may make or authorize Emergency Procurements when there exists an Emergency as defined in this Code, provided that such Emergency Procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the Emergency and for the selection of the particular Company shall be included in the Procurement file.

3-114 Public Private Ventures

(1) *Conditions for Use.* JEA hereby adopts F.S. §287.05712, as may be amended from time to time, for the receipt of unsolicited proposals for a qualifying project and the entering of contracts with a private entities for such projects, subject to the following conditions:

(a) *Application Fee.* The purpose of an application fee is to pay for the costs of evaluating the unsolicited proposal. The application fee shall be for the direct costs associated with JEA's engagement of non-JEA staff in the evaluation of the unsolicited proposal. The proposer will be notified of the estimated costs of evaluation and shall either pay the application fee or withdraw the unsolicited proposal.

(b) *Public Notice.* JEA shall publish public notice in a newspaper of general circulation at least once a week for two weeks stating that JEA has received the unsolicited proposal and JEA will accept other proposals for the same project. The timeframe for allowing other proposals shall be no fewer than 21 days but no more than 120 days after the initial date of publication of the notice.

(c) *Receipt of Proposals.* Sealed proposals must be received by the Procurement Office no later than the time and date specified for submission in the published notice.

(d) *Proposal Evaluations.* An evaluation team shall evaluate and rank the proposals based upon factors that include, but are not limited to, professional qualifications and experience, general business terms, innovative design, techniques or cost-reduction terms, and finance plans. Proposers may be invited to make oral presentations regarding their proposals. The recommendations of the Evaluation Team shall be submitted to the Awards Committee for approval, rejection or reconsideration.

(e) *Award.* For contracts involving long-term debt financing by JEA, the Awards Committee recommendation shall be reviewed and approved by the CEO. Award shall be made to the highest-ranked responsible proposer whose proposal is most advantageous to JEA in accordance with the criteria the Evaluation Team used in evaluating and ranking the proposals. The decision of the CEO shall be final. Written notice of the award shall be given to the successful proposer. Awards made by the CEO shall include authority for all subsequent options of renewal, if any. All contracts shall be in a form acceptable to the CEO and are subject to approval as to legal form by the Office of General Counsel. The Chief Financial Officer or his/her designee shall review all finance plans and documents related to the Private Entity's

performance, payment of subcontractors and similar responsibilities. The Director of Risk Management shall review all insurance and related requirements.

3-115 Collaborative Procurement Agreements

(1) *Authorization.* JEA may participate in, sponsor, conduct, or administer a Collaborative Procurement agreement for the Procurement of any Supplies or Services or Real Estate with one or more public or Utility Industry Partners, nonprofit organizations or purchasing alliances in accordance with an agreement entered into between the participants. Such Procurements shall be in accordance with Operational Procedures.

(2) *Compliance with Code.* JEA shall not enter into a Collaborative Procurement agreement for the purpose of circumventing this Code. When the Chief Procurement Officer determines that the Procurement policies and practices utilized by the public or Utility Industry Partner administering a Collaborative Procurement effort substantially comply with the underlying purposes and policies of this Code, JEA's participation in the Collaborative Procurement agreement shall be deemed to be in compliance with this Code.

(3) *Controversies.* Contract controversies arising from a Collaborative Procurement agreement may be resolved in accordance with Article 5, Administrative Remedies, or in accordance with other procedures established or adopted by the public or Utility Industry Partner administering the Collaborative Procurement.

3-116 Joint Projects

JEA may enter into joint projects with public or Utility Industry Partners, the City of Jacksonville and its other independent agencies or other political subdivisions (e.g., the United States Navy, the Florida Department of Transportation, etc.) independent of the requirements of Article 3, Source Selection. Joint projects may include, but shall not be limited to, the following:

- (a) combined water, sewer, drainage and road projects with the City of Jacksonville and Florida Department of Transportation;
- (b) projects that provide significant benefit to JEA and its ratepayers.

3-117 Use of Publicly Procured Contracts

JEA may procure from, or in accordance with pricing, or other terms and conditions set forth in contracts of the City of Jacksonville and its other independent agencies or political subdivisions, other city and state or governmental agencies, school board districts, community colleges, federal agencies, the public or governmental agencies of any state, or from state university systems, and procurement authorities of JEA separate systems, independent of the requirements of Article 3, Source Selection. These Procurements shall be awarded through the Awards Committee in accordance with the Operational Procedures promulgated in accordance with Section 2-403 (Awards Committee Procedures).

COMMENTARY

St. Johns River Power Park and Unit 4 of Plant Scherer are separate systems of JEA.

3-118 Use Of Contract Types

(1) Any type of Contract subject to this Code that will promote the best interest of JEA may be used provided that, to the maximum extent practicable, all Formal Contracts, except master Contracts, must contain a not-to-exceed maximum amount. All subsequent orders or work authorizations under master Contracts must be in writing and contain a not-to-exceed maximum amount.

(2) A Cost-Reimbursement Contract may be used only when a determination is made that such Contract is likely to be less costly to JEA than any other type or that it is impracticable to obtain the Supplies or Services required except under such a Contract.

COMMENTARY:

(1) JEA has restrictions upon the use of funds in a fiscal year other than that in which the funds are appropriated. This section permits multi-year Procurement so that JEA may:

- (a) procure larger quantities and obtain the benefits of volume discounts; and
- (b) encourage Companies to make capital investments or investments in process changes required to reduce the cost of Supplies or Services they provide JEA.

(2) A multi-year Contract should be used only for master Contracts, unit price Contracts and Supplies or Services needed on a continuing basis with annual quantity requirements that can be reasonably estimated in advance. Multi-year Procurements should attract more competitors to submit bids or offers for the large Contract Awards and thereby provide JEA with the benefits of increased competition.

(3) In some cases, potential vendors are reluctant to enter into multi-year Contracts because of volatility or fluctuations in the vendor's cost of materials or components. To facilitate volume discounts through multi-year Contracts in these situations, Contracts may be structured with fixed and variable cost elements, where the variable cost elements escalate or de-escalate based upon materials or component prices at the time of order. For example, multi-year Contracts for cable and transformers may contain a variable price element based upon the published metals market cost of copper. In no situation, however, shall JEA enter into a Contract with variable price elements that requires JEA to order Supplies when such Supplies exceed any not-to-exceed price established in the Contract or when JEA determines that such order is not in its best interest.

3-119 Form Of Contract Documents

(1) *Formal Contracts.* The Office of General Counsel shall approve as to form all initial Contract documents requiring the signature of multiple parties for Contract documents exceeding the Informal Purchase amount. Contract Amendments do not require OGC form approval, unless specifically requested by JEA, and can be signed by the Chief Procurement Officer after review by a qualified JEA Employee.

(2) *Informal Contracts.* Purchase order formats may be used for Contracts that do not require the formality of signatures by both parties. If a Contract is executed for an Informal Purchase, it does not do not require OGC form approval, unless specifically requested by JEA, and can be signed by the Chief Procurement Officer after review by a qualified JEA Employee.

COMMENTARY:

(1) The Operational Procedures shall specify when a Contract should be established for a particular Procurement.

3-120 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.

3-121 Project/Contract Manager Requirements

The role of a JEA Project and/or Contract Manager is as follows:

- (a) Focus on making best business decisions for JEA when authorizing work and approving invoices;
- (b) Improve Contract compliance by measuring vendor performance, applying liquidated damages, and holding the vendor accountable to Contract requirements;
- (c) Unless otherwise approved by the Director of the Organizational Element, payment retainage shall be in accordance with Florida Statute 255.078, as amended;
- (d) Take invoice payment discounts when appropriate; and
- (e) Ensure all invoices are processed per the Contract pricing and terms.

COMMENTARY:

(1) For Subsection (c), a Director of the Organizational element may reduce the retainage below the amount specified by Florida Statutes: (a) to an amount equal to no less than 20% of the remaining cost to complete the project; (b) where there are no performance issues or quality concerns with the Company to date; and/or (c) Contract is 90% complete.

3-122 Continuing Services Contracts

Continuing services contracts are utilized for recurring work that is projected over a period of time. Individual Tasks issued under a continuing services contract shall not exceed either the amount authorized by the Contract or the amount as authorized by Florida Statutes for the specific category of work.

COMMENTARY

The maximum Individual Task amounts for Professional Services are specified in Florida Statute 287.055 (2)(g), and the maximum amount for Individual Tasks for Construction Services are specified in Florida Statute 355.32 (3)

3-123 Contract Pricing Terms

Contract pricing terms are required in all contracts and are the basis for invoice payment approvals. The appropriate type of pricing terms will depend on the type of contract and work being performed and include, but are not limited to, the following:

- (a) Lump Sum/Fixed price Contracts. This type of Contract should be utilized for work that is clearly defined through the delivery of a specific deliverable or project milestone.

(b) Time and Materials and Labor Hour Contracts /Cost Reimbursement Contracts. This type of contract should be used when the scope and/or amount of work is uncertain at the beginning of the contract period.

(c) Unit Price Contracts: This type of contract is most appropriate for operations, repair and maintenance work provided through Continuing Services 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:

- (a) 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;
- (b) 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);
- (c) purchases in the secondary market of JEA debt issued under the resolutions listed above;
- (d) 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;
- (e) debt underwriting Services to underwrite bonds, notes or other debt-related financial instruments issued under the above resolutions, subject to a competitive bid;
- (f) bond counsel and related legal Services;
- (g) financial advisory Services;
- (h) trustee, registrar, paying agent, escrow agent, custody Services, and other similar fiduciary Services;
- (i) credit rating agencies Services;

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- (j) dealers or remarketing agents that market commercial paper, variable rate demand obligations or other variable rate debt issued under the above resolutions;
 - (k) Securities Lending arrangements;
 - (l) financial printing Services, including but not limited to official statement printing;
 - (m) banking Services;
 - (n) escrow verification Services and accounting Services related to a debt issue or escrow restructuring; and
 - (o) letters of credit or Revolving Credit Facilities.
 - (p) Florida Voluntary Cleanup Tax Credits

4-301 Authorized Investments

(1) *Investments.* Investments shall be procured pursuant to the guidelines outlined in the JEA investment policy approved by the JEA Board on September 5, 1995 (most recently amended 12/20/11) and any subsequent amendments to that 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 JEA Employees 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 or as authorized by the Chief Executive Officer, or Designee on a case by case basis, based on prevailing practices in the

marketplace for such financial instruments and arrangements. Written approval by the Chief Executive Officer or 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 Section will be confirmed by the Chief Executive Officer or Designee.

(2) *Selection.* Suggested methods of procuring the Companies 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 Companies selected to serve as underwriter or otherwise pre-qualified Companies 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 Companies selected to serve as underwriter or other groups of prequalified Companies as recommended in writing by JEA's financial advisor. If more than one Company is selected based on the RFI, a competitive bid shall be utilized among the Companies 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 Companies from within JEA's underwriting group or other groups of Companies 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 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 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 the Code or through additional resolutions approved by the 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. Companies 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 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 Section 12.0 of JEA's Investment Policy approved by the JEA Board on September 5, 1995 (most recently amended 12/20/11), 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 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(d) (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.* Board-approved resolutions authorize the sale of debt for each System. The Chief Executive Officer or 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(e) (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 F.S., or according to said section as it may from time to time be amended.

4-306 Bond Counsel and Related Legal Services

The Procurement of bond counsel and related legal Services shall be in a manner authorized by the Office of General Counsel. The Office of General Counsel may deem it appropriate to utilize the method contained in the City of Jacksonville Procurement Code Section 126.311 or in accordance with Section 3-106 (Request for Proposals) of the Code, and does not require the approval of the Chief Procurement Officer. Regardless of the Procurement process used, the General Counsel shall make the final selection of the top ranked Company and recommend said Company to the JEA Board for approval.

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 Companies 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 Companies 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 Designee. Terms and conditions for such Services shall be negotiated with the credit rating agency selected. Companies 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 Designee has the authority to delete any of the Companies 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) Solicitation by the Organizational Element or JEA's financial advisor; such RFI shall be limited to the group of Companies 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 Companies from within JEA's underwriting group or other qualified Companies 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 JEA investment policy, Section 9.0, approved by the JEA Board on September 5, 1995. This section applies to future bond resolutions that authorize Securities Lending transactions.

(2) *Selection.* Suggested methods of procuring the Companies 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 Companies 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 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 Companies 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:

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- (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:

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- (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 Ratification of Expenditures

The Chief Executive Officer shall ratify by signature a summary statement of all expenditures made in accordance with JEA's established practices and policies and applicable statutes. Such ratification shall be made on a monthly basis. This section of the Code satisfies the requirement of Section 21.10 of the JEA Charter.

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 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 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 Authority to Resolve Protested Solicitations and Awards

(1) *Right to Protest.* Any Company who is aggrieved in connection with a Solicitation or an Award of a Contract may submit a protest to the Chief Procurement Officer.

(2) *Protest Submittal.* All protests shall be submitted in writing and addressed to the Chief Procurement Officer. The protest shall clearly state the following:

- (a) the facts and issues supporting the protest,
- (b) specifically state how the Company has standing to protest,
- (c) and the remedies requested to resolve the protest.

(3) *Timeliness.* Failure to submit a timely protest shall result in the protest being rejected. A protest concerning an Award of a Contract shall be submitted in writing forty-eight (48) hours after such aggrieved Company knows, or should have known, of the facts giving rise thereto. A protest concerning a Solicitation (including any Minimum Qualifications or any Specifications) must be submitted within five (5) calendar days prior to Bid Opening..

(4) *Authority to Resolve Protests.* Prior to the commencement of an action in court concerning a protest, the Chief Procurement Officer or Designee shall have the authority to settle and resolve a Company's protest concerning a Solicitation or Award of a Contract. This authority shall be exercised in accordance with the JEA Operational Procedures. Unless otherwise allowed by Florida Statutes, a Company must exhaust all administrative remedies afforded to it by this Code and Operational Procedures before it can commence an action in a court of law.

(5) *Decision.* The Chief Procurement Officer or Designee shall promptly issue a decision in writing addressed to protesting Company. The decision shall:

- (a) recite all relevant facts;
- (b) state the reasons for the action taken; and
- (c) inform the Company of its right to administrative review as provided in this Article.

(6) *Notice of Decision.* A copy of the decision under Subsection (5) of this section shall be mailed or otherwise furnished immediately to protesting Company and any other party intervening.

(6) *Finality of Decision.* A decision under Subsection (5) of this Section shall be final and conclusive, unless clearly erroneous or fraudulent and any Company adversely affected by the decision may appeal administratively to the JEA Procurement Appeals Board in accordance with Section 5-303 (Appeals).

(7) *Stay of Procurements During Protests.* In the event of the receipt of a timely protest under Subsection (1) of this Section or under Section 5-303 (Appeals), JEA shall not proceed further with the Solicitation or with the Award of the Contract unless the Chief Procurement Officer, after consultation with the manager of the Organizational Element, makes a written determination that the Solicitation or Award of the Contract without delay is necessary to protect substantial interests of JEA.

COMMENTARY:

(1) It is essential that actual or prospective bidders and proposers have confidence in the procedures for soliciting and awarding Contracts. This can best be assured by allowing an aggrieved Company to protest a Solicitation, Award, or related decision. This section and Section 5-303 (Appeals) would permit actual or prospective bidders and proposers to:

- (i) promptly submit a protest to the Chief Procurement Officer concerning a Solicitation or Award; and
- (ii) have the protest decision reviewed by the Procurement Appeals Board.

(2) Nothing in this section is intended to affect the ability of the Office of General Counsel to settle actions pending before the Procurement Appeals Board, or the courts.

(3) The public posting of the Awards Committee agenda on the JEA website shall serve as one way in which a Company should know about an upcoming Award. The 48 hour limit for filing a protest shall begin at this public notice in this instance.

(4) Only a Company who is adversely affected by JEA's actions may file a protest under this Section. The purpose behind the standing requirement is to ensure that the protesting Company has a sufficient interest in the outcome of the protest resolution.

5-102 Authority to Debar or Suspend

(1) *Authority.* The Chief Procurement Officer or Designee is authorized to debar or suspend a Company from bidding on all JEA procurements for actions described in Subsection (2) of this Section. This authority shall be exercised in accordance with Operational Procedures and with the advice and counsel of the Office of the General Counsel.

(2) *Debarment.* After reasonable notice to the Company and a reasonable opportunity was provided for the Company to be heard, the Chief Procurement Officer, after consultation with the manager of the Organizational Element, shall have authority to debar a Company from consideration for the Award of Contracts. The debarment shall be for a period of no more than three (3) years.

(3) *Suspension.* After reasonable notice to the Company and a reasonable opportunity was provided for the Company to be heard, the Chief Procurement Officer, after consultation with the manager of the Organizational Element, shall have authority to suspend a Company from consideration for Award of Contracts. The suspension shall be for a period not exceeding six (6) months.

(4) *Causes for Debarment or Suspension.* The Chief Procurement Officer's decision to debar or suspend a Company shall depend on the seriousness of the adverse actions of the Company. The causes for debarment or suspension include, but may 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 F.S.;

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- (b) violation of Contract terms or requirements, as set forth below, of a character that is regarded by the Chief Procurement Officer to be so serious as to justify debarment or suspension action:
 - (i) deliberate failure, without good cause, to perform in accordance with the Contract, Specifications, performance levels, warranty provisions, bonding and insurance requirements, or to comply within the time limits provided in the Contract, or failure to pay subcontractors; or
 - (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more JEA Contracts, including the delivery of Supplies, provided that the failure to perform or unsatisfactory performance was not caused by acts beyond the control of the Company; or
 - (c) poor performance as reported under JEA's Vendor Performance Program;
 - (d) debarment or suspension by another governmental entity;
 - (e) the Company acted fraudulently or in bad faith;
 - (f) violation of JEA and the City of Jacksonville Ethic Code;
 - (g) violation of Ex Parte requirements; and
 - (h) any other cause the Chief Procurement Officer determines to be so serious and compelling as to affect the Company's performance of a Contract.

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

- (a) recite all relevant facts,
- (b) state the reasons for the action taken,
- (c) state the timeframe for debarment or suspension, and,
- (c) inform the debarred or suspended Company involved of its rights to administrative review as provided in this Article.

(6) *Notice of Decision.* A copy of the decision under Subsection (3) of this section shall be mailed or otherwise furnished immediately to the debarred or suspended Company and any other party intervening.

(7) *Finality of Decision.* A decision under Subsection (3) of this Section shall be final and conclusive, unless fraudulent, or the debarred or suspended Company appeals administratively to the Procurement Appeals Board in accordance with Section 5-304 (Protest of Suspension or Debarment Proceedings).

COMMENTARY:

It is strongly encouraged the Office of General Counsel is consulted prior to the commencement of debarment or suspension of a Company. Debarments involve situations that involve a greater degree seriousness, harm, or damage to JEA.

5-103 Authority to Resolve Contract and Breach of Contract Controversies

(1) *Applicability.* This Section applies to controversies between JEA and a Company (the “Parties”) that arise under, or by virtue of, a Contract between the Parties and cannot be settled in the normal course of business to the mutual satisfaction of the Parties and after reasonable attempts by the JEA Project Manager to resolve the matter. This includes but is not limited to, controversies based upon breach of Contract, mistake, misrepresentation, failure to perform, payment disputes, or other causes for disputes concerning the Contract terms.

(2) *Authority.* Prior to commencement of an action in a court concerning the controversy, the Chief Procurement Officer or Designee is authorized to settle and resolve a controversy described in Subsection (1) of this Section. This authority shall be exercised in accordance with Operational Procedures and with the advice and counsel of the Office of the General Counsel.

(3) *Decision.* If such a controversy is not resolved by mutual agreement, the Chief Procurement Officer or Designee shall promptly issue a decision in writing. The decision shall:

- (a) recite all relevant facts;
- (b) state the reasons for the action taken; and
- (c) inform the Company of its right to administrative review as provided in this section.

(4) *Notice of Decision.* A copy of the decision under Subsection (3) of this section shall be mailed or otherwise furnished immediately to the Company.

(5) *Finality of Decision.* The decision under Subsection (3) of this section shall be final and conclusive, unless fraudulent, or the Company appeals to the Procurement Appeals Board in accordance with Section 5-306 (Contract and Breach of Contract Controversies).

COMMENTARY:

(1) The word "controversy" is meant to be broad and all encompassing. It includes the full spectrum of disagreements from pricing of routine Contract changes to claims of breach of Contract.

(2) Resolving controversy is a primary duty of the JEA Project Manager assigned to the Contract. Controversies resolved by the JEA Project Manager in the normal course of business are not the subject of this section.

(3) Subsection (2) gives the Chief Procurement Officer the authority to settle all Contract claims and controversies prior to the filing of a suit. This may avoid unnecessary litigation and often is essential for fair treatment of a Company contracting with JEA. On the other hand, some safeguards are needed. Limitations upon the power to settle, including prerequisite approvals, should be established by appropriate Operational Procedure.

5-201 Remedies

The provisions of this part apply where it is determined administratively, or upon administrative review, that a solicitation or Award of a Contract is in violation of this Code.

5-202 Remedies Prior to an Award

If prior to Award it is determined that a Solicitation or a proposed Award of a Contract is in violation of this Code, then the Solicitation or the Award shall be:

- (a) canceled; or
- (b) revised to comply with this Code.

5-203 Remedies After an Award

If after an Award it is determined that a Solicitation or Contract is in violation of this Code, JEA shall take the following actions:

- (a) if the Company awarded the Contract has not acted fraudulently or in bad faith:
 - (i) the Contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of JEA; or
 - (ii) the Contract may be terminated.
- (b) if the Company awarded the Contract has acted fraudulently or in bad faith:
 - (i) the Contract may be declared null and void;
 - (ii) the Company may be debarred or suspended; and/or
 - (ii) the Contract may be ratified and affirmed if such action is in the best interest of JEA, without prejudice to JEA's rights in regard to such damages as may be appropriate.

5-301 The Procurement Appeals Board

(1) *Applicability.* Article 2 establishes the Procurement Appeals Board and Article 5 describes the duties and operation of the Procurement Appeals Board. Appendix A of this Code contains the procedures of the Procurement Appeals Board.

(2) *Authority.* The Procurement Appeals Board is authorized to review and make a final determination of any appeal by a protesting Company from a written decision issued by the Chief Procurement Officer, or a Designee, which is authorized by:

- (a) Section 5-101 (Authority to Resolve Protested Solicitations and Awards);
- (b) Section 5-102 (Authority to Debar or Suspend); and
- (c) Section 5-103 (Authority to Resolve Contract and Breach of Contract Controversies).

5-302 Jurisdiction of the Procurement Appeals Board

(1) *Jurisdiction.* The Procurement Appeals Board shall have jurisdiction to review and determine any appeal by a protesting Company from a determination by the Chief Procurement Officer, or a Designee except:

- (i) if an action has been initiated previously in the courts for essentially the same cause of action, or
- (ii) within forty eight (48) hours after the action is brought before the Procurement Appeals Board, written objection is made by either the aggrieved Company or the Chief Procurement Officer with the concurrence of the Office of General Counsel.

5-303 Appeals of Protest Decisions Regarding Solicitations or Awards

(1) *Scope.* This section applies to an appeal addressed to the Procurement Appeals Board of a decision under Section 5-101(3) (Authority to Resolve Protested Solicitations and Awards).

(2) *Appeal Submittal.* An aggrieved Company shall submit its appeal in writing to the Chief Procurement Officer who shall forward it to the Procurement Appeals Board. The appeal shall clearly state the following:

- (i) the facts and issues supporting the appeal,
- (ii) how the Company has standing to appeal, and
- (iii) the remedies requested to resolve the appeal.

(3) *Timeliness.* An appeal shall be submitted forty-eight (48) hours of receipt of a written decision pursuant to Section 5-101(3) (Authority to Resolve Protested Solicitations and Awards-Decision). Failure to submit a timely written appeal shall result in the appeal being dismissed.

(4) *Acknowledgement.* In accordance with the Operational Procedures, a JEA representative will contact the protesting Company to acknowledge receipt of the appeal and to schedule the Procurement Appeals Board Review Meeting.

(5) *Standard of Review.* The Procurement Appeals Board shall conduct a *de novo* review of the issue(s) presented for appeal and shall determine if JEA's intended actions are:

- (i) in conflict with JEA's Procurement Code and Operational Procedures;
- (ii) arbitrary,
- (iii) capricious;
- (iv) dishonest;
- (v) fraudulent;
- (vi) clearly erroneous;
- (vii) illegal; and/or
- (viii) *not* in the best interests of JEA.

(6) *Burden of Proof.* The burden of proof shall rest with the protesting Firm.

(7) *Decision.* After the Procurement Appeals Board has reviewed the appeal issues, it shall deliberate its decision at the Procurement Appeals Board Review Meeting and announce its decision prior to adjourning the meeting. After adjournment, the Procurement Appeals Board shall issue a written decision restating the decision announced at the Procurement Appeals Board Review Meeting. Decisions rendered by the Procurement Appeals Board shall be final and conclusive, unless clearly arbitrary, capricious, fraudulent, or clearly erroneous.

5-304 Protest of Suspension or Debarment Proceedings

(1) *Scope.* This section applies to a review by Procurement Appeals Board of a decision under Section 5-102(3) (Authority to Debar or Suspend-Decision).

(2) *Appeal Submittal.* An aggrieved Company shall submit its appeal in writing to the Chief Procurement Officer who shall forward it to the Procurement Appeals Board. The appeal shall clearly state the following:

- (i) the facts and issues supporting the appeal, and
- (ii) the remedies requested to resolve the appeal

(3) *Acknowledgement.* In accordance with the Operational Procedures, a JEA representative will contact the protesting Company to acknowledge receipt of the appeal and to schedule the Procurement Appeals Board Review Meeting.

(4) *Timeliness.* The aggrieved Company shall file its appeal with the Procurement Appeals Board within thirty (30) days after receipt of a decision under Section 5-102(3) (Authority to Debar or Suspend-Decision). Said appeal shall be sent to the Chief Procurement Officer who shall forward it to the Procurement Appeals Board.

(5) *Standard of Review.* The Procurement Appeals Board shall conduct a *de novo* review of the issue(s) presented for appeal and shall determine if JEA's intended actions are:

- (i) in conflict with JEA's Procurement Code and Operational Procedures;
- (ii) arbitrary,
- (iii) capricious;
- (iv) dishonest;
- (v) fraudulent;
- (vi) clearly erroneous; and/or
- (vii) illegal; and/or
- (viii) *not* in the best interests of JEA.

(6) *Burden of Proof.* The burden of proof shall rest with the protesting Firm.

(7) *Decision.* After the Procurement Appeals Board has reviewed the appeal issues, it shall deliberate its decision at the Procurement Appeals Board Review Meeting and announce its decision prior to adjourning of the meeting. After adjournment, the Procurement Appeals Board shall issue a written decision restating the decision announced at the Procurement Appeals Board Meeting. Decisions rendered by the Procurement Appeals Board shall be final and conclusive arbitrary, capricious, fraudulent, or clearly erroneous.

5-305 Contract and Breach of Contract Controversies

(1) *Scope.* This section applies to a review by the Procurement Appeals Board of a decision under Section 5-103(3) (Authority to Resolve Contract and Breach of Contract Controversies).

(2) *Appeal Submittal.* An aggrieved Company shall submit its appeal in writing to the Chief Procurement Officer who shall forward it to the Procurement Appeals Board. The appeal shall clearly state the following:

- (i) the facts and issues supporting the appeal, and
- (ii) the remedies requested to resolve the appeal

(3) *Acknowledgement.* In accordance with the Operational Procedures, a JEA representative will contact the protesting Company to acknowledge receipt of the appeal and to schedule the Procurement Appeals Board Review Meeting.

(4) *Timeliness.* The aggrieved Company shall file its appeal with the Procurement Appeals Board within thirty (30) days of the receipt of the decision under Section 5-103(3) (Authority to Resolve Contract and Breach of Contract Controversies). Said appeal shall be sent to the Chief Procurement Officer who shall forward it to the Procurement Appeals Board.(5) *Standard of Review.* The Procurement Appeals Board shall conduct a *de novo* review of the issue(s) presented for appeal and shall determine if JEA's intended actions are:

- (i) in conflict with JEA's Procurement Code and Operational Procedures;
- (ii) arbitrary,
- (iii) capricious;
- (iv) dishonest;
- (v) fraudulent;
- (vi) clearly erroneous;
- (vii) illegal; and/or
- (viii) in the best interests of JEA.

(5) *Burden of Proof.* The burden of proof shall rest with the protesting Firm.

(6) *Decision.* After the Procurement Appeals Board has reviewed the appeal issues, it shall deliberate its decision at the Procurement Appeals Board Review Meeting and announce its decision prior to adjourning of the meeting. After adjournment, the Procurement Appeals Board shall issue a written decision restating the decision announced at the Procurement Appeals Board Review Meeting. Decisions rendered by the Procurement Appeals Board shall be final and conclusive arbitrary, capricious, fraudulent, or clearly erroneous.

**APPENDIX A- PROCUREMENT APPEALS BOARD
PROCEDURES**

Memo for Hearings
Before the JEA Procurement Appeals Board (PAB)

This memo contains information about your hearing before the JEA Procurement Appeals Board (PAB).

Protestant: _____
Solicitation: _____

1. Time and Place of Hearing

Date: _____

Time: _____

Location: JEA Tower ____ Floor Conference Room
21 W. Church St., Jacksonville, FL 32202

2. Members of the PAB

1. _____ serving as the Chair

2. _____

3. _____

- Ex parte communications between the Protestant and the JEA staff with the members of the PAB are prohibited.

3. Filing of Additional Materials

JEA shall provide the members of the PAB with the following information prior to the hearing, with a copy to the Protestant:

- The Solicitation, with all addenda, and including bid tabulation and award item, if applicable;
- The written protest at both the Chief Purchasing Officer (CPO) and PAB level;
- The written decision of the CPO;
- The acknowledgement of receipt of the appeal;
- Appointment letter of the members of the PAB;
- Other materials as may be necessary.

The CPO and the Protestant may file additional materials for PAB review. One (1) original and five (5) copies of any additional materials shall be provided AT LEAST TWO (2) BUSINESS DAYS PRIOR TO THE DAY OF THE HEARING. In addition to the copies listed above, a copy of any additional materials submitted by the CPO shall be provided to the Protestant.

Additional materials shall be addressed to:

JEA,
Jacksonville, FL 32202

4. Special Requirements

Any Persons needing special accommodations to participate in the above hearing please contact _____ no later than three (3) days before the meeting in order to make arrangements.

5. Hearing Preliminaries and Procedure

The Procurement Appeals Board (PAB) is established in the JEA Purchasing Code, Art. 2, sections 2-503 to 2-504, Art. 5, sections 5-301 to 5-305. Procedures are established in the JEA Operational Procedures, which supplements the Purchasing Code.

The PAB consists of at least three (3) members, with one of the members designated as the Chair. The appointment of the members and the designation of the chair are made by the Managing Director.

The hearing shall be a public meeting, held in compliance with the Florida "Sunshine Law".

If a person decides to appeal any decision made by JEA with respect to any matter considered at the hearing, for the purpose of such appeal, that person will need a record of the proceedings; for such purpose, that person may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

Ex parte communications between the Protestant and the JEA staff with the members of the PAB are prohibited.

At the time and place established for the hearing, the PAB shall hear testimony and receive other evidence from both the Protestant and the CPO, and will base its decision on the information provided both orally and in writing. The formal rules of evidence pursuant to the Florida Evidence Code will not apply at the hearing. Hearsay evidence may be admissible at the discretion of the PAB chair. The PAB, through the Chair, may limit presentations to a reasonable time. The PAB members may ask questions at any time.

The basis for decision for the PAB is set forth in the Purchasing Code, Article 5.

In general, the hearing procedure shall be as follows:

1. A representative of the PAB will give a brief overview of the hearing procedure;
2. The Protestant or legal representative will present its case based upon the issues and information contained in the protest;
3. Those persons or entities, other than the Protestant, who have legal standing and will be directly affected by the resolution of the protest will be given an opportunity to be heard and present information to the committee;
4. The CPO will make a presentation;
5. The PAB may seek any clarifications of either party;
6. The PAB will reach a decision either supporting or denying the appeal. A PAB member shall make a motion, which will require a second, and the vote will be taken and recorded. A majority vote of the members of the PAB shall be required to support the action;
7. The decision of the PAB may be issued verbally or in writing within three (3) business days of the date of the hearing. If the decision is issued orally at the hearing, the minutes of the meeting may serve as the written evidence of the decision.