



**BOARD RESOLUTION: 2024-35**  
June 25, 2024

**A RESOLUTION OF THE JEA BOARD OF DIRECTORS APPROVING REVISIONS TO THE JEA PROCUREMENT CODE**

**WHEREAS**, the JEA Procurement Code was adopted via a JEA Board resolution in 1996 as a comprehensive purchasing code for use in governing all JEA purchases and related administrative activities. The Procurement Code provides a solid foundation for JEA's procurement activities and has been amended over the years to remain current with industry best practices; and

**WHEREAS**, the JEA Chief Procurement Officer is responsible for updating JEA's Procurement Code and ensuring it is in compliance with all applicable laws and regulations; and

**WHEREAS**, the last significant Procurement Code revision was made in 2023 following the completion of the biannual review in accordance with Article 21-JEA Charter; and

**WHEREAS**, the JEA Board of Directors directed revisions to the Procurement Code regarding the delegation of authority for contracts exceeding \$50,000,000.00; and

**WHEREAS**, in accordance with the requirements of Section 21.09 of JEA's Charter, the revised Procurement Code is required to be approved by the Board of Directors.

**BE IT RESOLVED** by the JEA Board of Directors that:

1. The Board of Directors grants JEA approval for the revisions to the JEA Procurement Code.
2. To the extent there are typographical, clerical, or administrative errors that do not change the tone, tenor, or context of this resolution, such errors may be revised without subsequent approval by the JEA Board of Directors.
3. This resolution shall be effective immediately upon passage.

Dated this 25<sup>th</sup> day of June 2024.

  
\_\_\_\_\_  
JEA Board Chair

  
\_\_\_\_\_  
(Acting) JEA Board Secretary

Form Approved by:

  
\_\_\_\_\_  
Office of General Counsel

VOTE	
In Favor	5
Opposed	0
Abstained	0

# Amended and Restated JEA Procurement Code

Effective June 25, 2024

## Revisions:

2023

2021

2020

2016

2015

2011

2004

1997

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## DEFINITIONS

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

*Appeal* shall have the meaning set forth in Section 4-106 of this Code.

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

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

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

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

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

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

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

*Code* means this Amended and Restated JEA Procurement Code.

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

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

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

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

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

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

*Collaborative Procurement* means a Procurement undertaken by JEA in accordance with Section 3115 of this Code.

*Data* means recorded information, regardless of form or characteristic.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Protest* shall have the meaning set forth in Section 4-101 of this Code.

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

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

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

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

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

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

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

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

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

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

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

*Services* means the furnishing of labor, time or effort by a Vendor, and includes, but is not limited to, work performed on Construction projects and the receipt, delivery and transmission of electric power, fuel, by-products or thermal energy, work customarily rendered by attorneys, certified public accountants, insurance agents, financial advisors, personnel consultants, health care providers and consultants, systems consultants, software or technology consultants, temporary staffing providers, and management consultants,

and administrative, maintenance, repair, installation and other technical services. This term shall not include employment agreements or collective bargaining agreements.

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

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

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

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

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

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

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

## **ARTICLE 1- GENERAL PROVISIONS**

### **1-101 Purposes, Rules of Construction**

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

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

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

(b) *Transparency in Procurement processes.* This Code and all Procurement policies, Operational Procedures, rules, directives, standards, and other procurement governing documents, including any amendments thereto, shall be posted on JEA's website in a conspicuous manner for the public to view. All records of JEA Procurement activities shall be subject to disclosure under

Florida's public records laws, including, but not limited to those laws codified in Section 119, Florida Statutes, as amended.

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

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

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

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

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

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

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

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

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

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

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

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

## **1-102 Application of this Code**

(1) *General Application.* This Code applies to Procurement activities conducted by JEA and repeals and replaces all previously adopted versions of the JEA Procurement Code. Notwithstanding the foregoing, nothing herein shall affect the validity of Procurement activities conducted in compliance with the version of the Code in effect at the time such activities were conducted.

(2) *Application to JEA Procurement.* This Code shall apply to all 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.

(3) *Application of City of Jacksonville Procurement Code.* If the Code is silent on a specific procurement procedures, JEA may defer to the City of Jacksonville Code where addressed.



### **1-103 Determinations**

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

### **1-104 Policy of Continuous Improvement**

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

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

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

### **1-106 General Counsel of the City of Jacksonville; Engagement of Legal Services**

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

The provision of legal Services as contemplated by this Section 1-106 shall include all legal related services, e.g., court reporters, expert consultants or witnesses, and Real Estate property appraisers. Legal counsel engaged by JEA shall have the authority to engage such related legal Services only to the extent that

the vendor of such related legal Services and the maximum indebtedness of JEA's obligations in connection with such services is approved in by the General Counsel and described in the engagement letter for such legal counsel. The engagement of related legal Services by outside counsel shall not be used as a means to circumvent the competitive bidding requirements or any other provisions of this Code.

## **1-107 Ex Parte Communication Prohibited**

Adherence to procedures that ensure a fair open and impartial Procurement process is essential to the maintenance of public confidence in the value and soundness of the important process of public Procurement. Therefore, except as provided in subsection (3) of this Section 1-107, employees, agents and all other representatives of a Vendor shall be strictly prohibited from communicating, directly or indirectly, with any of the JEA representatives described in subsection (1) below during a period described in subsection (2) below.

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

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

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

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

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

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

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

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

(d) Awards Committee and the

(e) Procurement Appeals Board meetings advertised and conducted pursuant to Florida's Open Meetings Laws;

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

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

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

### **1-108 Retention of Procurement Records**

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

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

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

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

### **1-110 Record of Procurement Actions**

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

- (a) The number of Awards for the reporting fiscal year;
- (b) A detailed listing of all Awards categorized by service type (e.g., Construction, Professional Services, Supplies, etc.), Award type (e.g., Single Source, Emergency, Request for Proposals, Invitation

to Negotiate, piggyback, etc.) and a brief description of each Award containing the Vendor name, Contract amount and Contract term;

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

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

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

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

## **ARTICLE 2 - PROCUREMENT AUTHORITY & DESIGNATIONS, AND COMMITTEES**

### **2-101 Procurement Authority and Duties of the JEA Board**

Pursuant to Article 21 of the Charter of the City of Jacksonville, the JEA Board shall review and approve this Code and all amendments to this Code. The JEA Board may not delegate its approval of this Code, including any amendments thereto, to the Chief Executive Officer or any other officer, employee or agent of JEA. The JEA Board shall approve all Contracts as required by the Delegation of Authority and Responsibility Policy approved by the JEA Board or as subsequently amended.

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

### **2-102 Procurement Code Exemptions**

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

(a) Generation Fuels, Emission Allowances, and Associated Transport;

(b) Byproducts;

(c) Purchase or Sale of Electric Energy, Electric Generation Capacity, Electric Transmission Capacity and Transmission Services – Short- and Long-Term Transactions;

(d) Sale of JEA Owned Transmission and Ancillary Services, including applicable Enabling Agreements;

- (e) Environmental Allowances;
- (f) Real Estate, including easements;
- (g) Community Outreach Procurements; and
- (h) Financial Instruments and Services

The Operational Procedures shall provide more detail concerning the procedures on how to procure the above listed exempt categories of Supplies and Services.

(2) Prior to the Procurement of Supplies or Services by an Organizational Element Manager, the Organizational Element Manager shall obtain all appropriate approvals required by the Procurement Exemption for the specific procurement which can be found in the Operational Procedures and verify there are no conflicts of interest between JEA and the vendor.

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

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

## **2-103 Appointment and Authority of the Chief Procurement Officer**

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

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

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

- (a) supervise and coordinate the Procurement of all Supplies and Services by JEA;
- (b) make Determinations as to what constitutes a minor irregularity in Bids, Proposals and Responses and when Bids, Proposals and Responses should be rejected as unresponsive;
- (c) conduct or coordinate training on JEA's Procurement policies and processes and related matters;
- (d) develop and maintain the standard contract language for Solicitations, Contracts and other documents used in the JEA's Procurement process in consultation with the Office of General Counsel; and
- (e) exercise the duties given to the Chief Procurement Officer in Article 4 of this Code.

## **2-104 Delegation of Authority by the Chief Procurement Officer**

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

## **2-105 Procurement Document Review**

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

## **2-106 Awards Committee**

- (1) *Awards Committee Membership.* The JEA Awards Committee shall consist of three Vice Presidents or other senior Officers of JEA appointed by the Chief Executive Officer. Members of the Awards Committee shall serve a two-year term, or until their successors have been appointed. Multiple terms are permitted. The Chief Executive Officer will appoint an Awards Committee member to be the chair of the committee who will run the meeting. Members of the Awards Committee may be removed at any time with or without cause by the Chief Executive Officer. If an Awards Committee member shall cease to be qualified to serve, then the member's term shall be vacant until the Chief Executive Officer appoints a replacement.
- (2) *Liaisons.* There shall be three permanent liaisons present at all meetings of the Awards Committee which shall include the Chief Procurement Officer, a representative from the Budget Organizational Element designated by the Chief Executive Officer and a representative from the Office of General Counsel. These liaisons shall not be considered voting members of the Awards Committee for purposes of Florida's Open Meetings Laws.
- (3) *Quorum.* The presence of at least two voting members of the Awards Committee shall constitute a quorum. If a quorum is not present or any one of the three Liaisons is not in attendance, the meeting shall be cancelled. If a voting member of the Awards Committee or a liaison is unable to attend a meeting of the Awards Committee, that voting member or liaison may designate an alternate to serve for that meeting, and the alternate shall for all purposes (including, but not limited to satisfying quorum requirements and voting) be considered a member or liaison, as the case may be, for that meeting.

## **2-107 Awards Committee Procedures**

All meetings of the Awards Committee shall be held in accordance with this Code and the requirements of Florida's Open Meetings Laws and shall be properly noticed, and minutes shall be taken. The voting members of the Awards Committee shall not discuss any matter which foreseeably could come before the Awards Committee with

another voting member of the Awards Committee unless such discussions take place in a duly noticed meeting held in accordance with Florida's Open Meetings Laws.

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. Items may be presented to the Awards Committee as part of a regular or a consent agenda. Items placed on the consent agenda shall be those items that do not require discussion or explanation prior to committee action. An individual Awards Committee member may remove items from the consent agenda prior to the vote on the consent agenda. An item removed from the consent agenda shall be discussed and acted upon separately following the consideration of the consent agenda. Such items may be taken up immediately following approval of the consent agenda or placed later on the agenda at the Chair's discretion. Except as otherwise provided herein, once an Award Item is reviewed and approved by the Awards Committee, JEA is authorized to proceed with executing a Contract. Items that are moved from the consent agenda to the regular agenda shall require the approval of the Chief Executive Officer before the Award is finalized.

The Chief Procurement Officer shall conduct all meetings of the Awards Committee and shall present each Award item placed on the regular agenda to the Committee for its consideration. The Chair shall have the authority to determine the presence of a quorum and whether any voting requirement has been met. The Chief Procurement Officer shall be responsible for all administrative matters relating to the conduct of the Committee's business including, but not limited to, ensuring that proper notice is given, and minutes are taken.

## **2-108 Duties of the Awards Committee**

- (1) *Scope of Review.* The Awards Committee shall review each Award item presented to the Committee, by way of regular or consent agenda, and shall consider whether the proposed item is in compliance with this Code and in the best interest of JEA.
- (2) *Required Approvals.* The following Procurements of Supplies and Services by JEA shall require approval by the Awards Committee:
  - (a) Formal Purchases of Supplies and Services by JEA as provided in Section 3-101, unless exempt under Section 2-102 (Procurement Code Exemptions) or specifically provided otherwise in this Code;
  - (b) changes to, and renewals of, any Contracts executed in connection with an Award approved by the Awards Committee if:
    - (i) the financial impact of the change or renewal exceeds 10% of the amount of the most recent Award approved by the Awards Committee;
    - (ii) the financial impact of the change or renewal exceeds \$1,000,000;

- (iii) the change or renewal causes an Informal Purchase to exceed the threshold for a Formal Purchases set forth in Section 3-101 of this Code;
- (iv) the change or renewal, in the opinion of the Chief Procurement Officer, changes the Award approved by the Awards Committee in any material respect.
- (c) sales of Supplies or Services by JEA that exceed \$300,000 or annual spend in excess of \$300,000 for continuing services contracts, including, but not limited to the sale of any surplus items;
- (d) Procurements exempt under Section 2-102 (Procurement Code Exemptions) of this Code if required by the Procurement processes and procedures established by the applicable Organizational Manager; and
- (e) ratification of all Formal Purchases procured under Section 3-113 (Emergency Procurements) of this Code.

(3) *Availability of Funding for Procurement Items.* The Awards Committee shall approve Awards items only after receiving confirmation as provided in this Section 2-108(4) that sufficient funds are available for the Award. Prior to presentation to the Awards Committee, each Award item shall be reviewed and approved by the Budget Organizational Element to determine whether sufficient funding is available for the Award.

(4) *Effect of Approval.* Once an Award item is reviewed and approved by the Awards Committee, and the Chief Executive Officer as needed, JEA is authorized to proceed with actions to finalize the Procurement of the Supplies or Services consistent with the Award, including but not limited to, execution of a Contract, issuance of a Purchase Order and notice to proceed, and acceptance of delivery of Supplies and Services, subject to lawfully appropriated funds. An Award may be rejected if, in the judgment of the Chief Executive Officer, the Award does not comply with the requirements of the JEA Procurement Code, Operational Procedures, or other applicable law.

(5) The JEA Board shall approve all Contracts as required by Section 2-1 this Code.

## **2-109 Alternative Delivery Methods**

For projects utilizing alternative delivery methods such as, but not limited to, Design Build or CMAR, where the proposed project estimate as a whole will exceed the limits of the Delegation of Authority and Responsibility Policy, the procurement shall be taken to the JEA Board for approval as further defined in the Operational Procedures.

# **ARTICLE 3 – SOURCE SELECTION AND CONTRACT FORMATION**

## **3-101 Formal Purchases**

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

- (a) the Procurement of Supplies or Services where the estimated aggregate costs and fees for the Procurement exceed \$300,000 annually;
- (b) the Procurement of Capital and O&M projects where the estimated total project costs and fees for the Procurement exceed \$300,000;
- (c) “Public construction works” required to be competitively awarded under Section 255.20,



Florida Statutes, as amended;

(d) “Electrical work” required to be competitively awarded under Section 255.20, Florida Statutes, as amended; and

(e) “Professional Services” required to be publicly announced under Section 287.055, Florida Statutes, as amended.

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

### **3-102 Informal Purchases**

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

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

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

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

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

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

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

### **3-103 Methods of Pre-Source Selection**

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

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

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

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

### **3-104 Methods of Source Selection**

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

- (a) Section 3-105 (Invitation for Bids (IFB));
- (b) Section 3-106 (Request for Proposals (RFP));
- (c) Section 3-107 (Consultants’ Competitive Negotiation Act (CCNA) (Architectural, Engineering, Landscape Architectural, or Surveying & Mapping Services));
- (d) Section 3-108 (Design-Build Contracts);
- (e) Section 3-109 (Construction Management and Program Management);
- (f) Section 3-110 (Multi-Step Competitive Bidding);
- (g) Section 3-111 (Invitation to Negotiate (ITN));
- (h) Section 3-112 (Single Source);
- (i) Section 3-113 (Emergency Procurements);
- (j) Section 3-114 (Public Private Partnerships);
- (k) Section 3-115 (Collaborative Procurements);
- (l) Section 3-116 (Joint Projects);
- (m) Section 3-117 (Use of Publicly Procured Contracts);
- (n) Section 3-118 (Pilot Projects);
- (o) Section 3-119 (Use of Reverse Auctions);

The Chief Procurement Officer may elect to use any one of the Methods of Source Selection listed in this Section 3-104 if the Method of Source Selection is deemed by the Chief Procurement Officer to be in the best interest of JEA consistent with the purposes and guiding principles set forth in Section 1-101 of this Code. Notwithstanding the foregoing, the Method of Source Selection shall comply with the requirements of this Code, the provisions of any grant or other funding or cooperative agreements to which JEA is a party, and all applicable laws and regulations, including but not limited to, statutory requirements for the Procurement of Professional Services subject to the CCNA and Construction services meeting certain statutory thresholds. As authorized by Florida Statute 255.20, in the event a Contract is terminated for a vendor’s default, JEA may directly award a Contract for the completion of the Work that was to be completed under the terminated Contract. The Operational Procedures shall establish a process and procedures for each Method of Source Selection.

### **3-105 Invitation For Bids (IFB)**

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

### **3-106 Request for Proposal (RFP)**

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

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

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

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

### **3-108 Design-Build Contracts**

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

### **3-109 Construction Management and Program Management**

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

### **3-110 Multi-Step Competitive Bidding**

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

### **3-111 Invitation to Negotiate (ITN)**

The Invitation to Negotiate is a Method of Source Selection that allows JEA to directly negotiate with Vendors to obtain best overall value for JEA. Under the ITN, JEA first evaluates initial Proposals with the intent to identify one or more Responsive and Responsible Respondent with which JEA may enter into one or more rounds of negotiations. Negotiations may result in modifications to the scope of work and terms and conditions of the ITN, submission of revised Bids or Responses, and may conclude with the submission of Best and Final Offers from one or more Vendors. The procedures for conducting an Invitation to Negotiate shall be described in the ITN Solicitation and the Operational Procedures.

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

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

### **3-112 Single Source**

Contract may be awarded for Supplies or Services as a Single Source when, pursuant to the Operational Procedures, the Chief Procurement Officer determines there is only one justifiable source for the required Supplies or Services (justifications below):

- a. the Supplies or Services must be a certain type, brand, make or manufacturer due to the criticality of the item or compatibility within a JEA utility system, and such Supplies or Services may not be obtained from multiple sources such as distributors; (*examples include highly specialized equipment/services, OEM, exclusive intellectual property, only one supplier can meet the JEA Standard requirement, memberships to organizations*)
- b. the Supplies/Services are a follow-up of Supply/Service that may only be done efficiently and effectively by the Vendor that rendered the initial Services to JEA, provided the Procurement of the initial Services was competitive
- c. at the conclusion of a Pilot Project under Section 3-118 of this Code, the Procurement of Supplies or Services tested during the Pilot Project, provided the Vendor was competitively selected for the Pilot Project

### **3-113 Emergency Procurements**

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

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

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

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

Transition of Emergency. Once the Emergency is resolved or the Emergency declaration is lifted, JEA will cease using the services procured as an Emergency. If the services are still needed after the end of the Emergency, JEA will procure those service in accordance with the Code.

### **3-114 Public-Private Partnerships**

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

### **3-115 Collaborative Procurements**

JEA may participate in, sponsor, conduct, or administer a Collaborative Procurement for the Procurement of any Supplies or Services or Real Estate with one or more Governmental Entities, utility

industry partners, nonprofit organizations or purchasing alliances in accordance with the terms of an agreement entered into between the participants. Such Procurements shall be in accordance with this Code and the Operational Procedures.

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

### **3-116 Joint Projects**

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

Notwithstanding the foregoing, the Procurement of Supplies and Services by JEA in a Joint Procurement shall be consistent with the guiding principles and purposes of this Code set forth in Section 1101.

### **3-117 Use of Publicly Procured Contracts**

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

### **3-118 Pilot Projects**

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

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

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

process to obtain the Supplies or Services.

### **3-119 Use of Reverse Auctions**

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

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

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

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

### **3-120 Form of Contract Documents**

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

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

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

### **3-121 Execution of Contract Documents**

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

### **3-122 JEA Project Manager**

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

### **3-123 Continuing Services Contracts**

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

### **3-124 Contract Pricing Terms**

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



### **3-125 Compliance with Federal and State Procurement Requirements**

To the extent that a conflict exists between the provisions of this Code and the provisions of federal or state procurement requirements necessary to receive and expend grant funding, the CPO, in consultation with the Office of General Counsel, is authorized to waive any such conflicting Code provision and comply with the federal or state procurement requirement. In the event a Code provision is waived pursuant to this section, upon final approval of the contract award, the CPO shall notify the Chief Executive Officer.

## **ARTICLE 4 - ADMINISTRATIVE REMEDIES**

### **4-101 Protests**

(1) *Guiding Principles.* It is important that actual or prospective Bidders, Proposers and Respondents have confidence in JEA's Procurement process and procedures. One method of maintaining this confidence is to provide Vendors with an opportunity to file Protests relating to Solicitations and Awards and Intent to Award as provided in this Section 4-101. The provisions of this Article shall apply only to Formal Procurement actions as defined in Article 3-101 as provided herein. All other disputes will be resolved by the CPO as provided in the Operational Procedures. The provisions of this Article may not be used in connection with any Contract dispute, determination of Vendor performance, or Contract termination.

(2) *Right to Protest Procurement Actions.* Any Vendor who is adversely affected by an Award or an Intent to Award may submit a written Protest meeting all of the requirements of subsections (3) and (4) of this Section 4-101. Protests in connection with the requirements of a Solicitation or a Determination made in connection with a Solicitation shall include, but not be limited to, Protests concerning any event or aspect of the Procurement process that followed the issuance of the Solicitation and led to the Award or Intent to Award, Protests relating to the rejection of a Bid, Proposal or Response, including, but not limited to, whether a Bidder, Proposer or Respondent is Responsible or Responsive, and Protests relating to any ranking, scoring, or short-listing of Proposers or Respondents. Protests shall not include challenges to minimum qualifications, the Technical Specifications, the chosen procurement method, the evaluation criteria, the relative weight of the evaluation criteria, or the formula specified for assigning points to the evaluation criteria.

- (3) *Protest Requirements.* Protests shall:
- (i) be submitted in writing in a letter or email addressed to the Chief Procurement Officer;
  - (ii) identify the Solicitation, Award, or Intent to Award, by number and title or other language sufficient to enable the Chief Procurement Officer to identify the Solicitation, Award, or Intent to Award;
  - (iii) demonstrate the timeliness of the Protest;
  - (iv) state the Protestant's complete legal name and legal standing to protest; and

(v) clearly state with particularity the issues and material facts supporting the Protest, and any legal authority upon which the Protest is based; with requested remedy.

Contact information for the Chief Procurement Officer can be found at [jea.com](http://jea.com) under the Procurement section of the website.

*(4) Timeliness.*

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

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

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

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

(7) *Protest Bond.* Within 48 hours from a submitting a Protest, the Protestant is required to submit a protest bond, or alternate security approved by JEA, the amount of 1% of Protestant's submitted Bid/Proposal/Response amount or \$10,000, whichever is less. If the Protestant does not submit the protest bond within the specified timeframe, the protest will be void and waives the right to further protest JEA's decision. If the Protest is successful, the protest bond shall be returned in full to the Protestant within a reasonable time.

However, if JEA prevails, JEA shall retain the protest bond, in full or in part, in order to cover any administrative costs associated with addressing the protest.

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

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

(10) *Decision by Chief Procurement Officer.* After receipt of a Protest, and following a hearing, if any, and any period of time the Chief Procurement Officer may allow for other interested parties to respond to the Protest, the Chief Procurement Officer shall issue a written decision on the Protest. The written decision shall identify the Protestant, recite relevant facts material to the decision, and state the decision and briefly summarize the Chief Procurement Officer's reasoning leading to the decision. The Chief Procurement Officer's review of a Protest shall be limited to material contained in the Protestant's response to the Solicitation that is the subject of the Protest, and the Chief Procurement Officer's decision shall be based on whether the Procurement action being protested was arbitrary, capricious, or clearly erroneous. In the event the decision is subject to review by the Procurement Appeals Board under this Article 4, the written decision of the Chief Procurement Officer shall inform the Protestant of this right with a reference to the Sections of this Code and Operational Procedures outlining the procedures for Appeals.

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

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

(13) Nothing in this Article 4 shall affect the ability of the Office of General Counsel to settle Protests pending the outcome of decisions by the Chief Procurement Officer, the Procurement Appeals Board, or the courts.

#### **4-102 Suspensions and Debarments**

(1) *Authority.* The Chief Procurement Officer, after consultation with the Organizational Element Manager, shall have authority to suspend or debar a Vendor from consideration for participation in any Procurement undertaken by JEA.

(2) *Causes for Suspension or Debarment.* In making a decision of whether to suspend or debar a Vendor, and the length of any suspension or debarment, the Chief Procurement Officer shall consider the seriousness of the facts leading to the suspension or debarment. The causes for suspension or debarment may include, but not be limited to, the following:

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

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

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

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

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

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

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

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

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

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

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

(3) *Suspension/Debarment Timeframes.* The Chief Procurement Officer, in concurrence with the Chief of the Business Organizational Element, shall consider the causes set forth in (2) above in determining the length of a Vendor's suspension or debarment. Suspensions shall be subject to the maximum length as set forth below:

- a First Offense – up to 2 years suspension of bidding privileges
- b Second Offense – up to 5 years suspension of bidding privileges
- c Third Offense – Vendor is debarred and bidding privileges are suspended permanently.

(4) *Effect of Suspension or Debarment.* A Vendor that is suspended or debarred under this Section 4-102 shall be ineligible to participate in Procurements or as otherwise specified by the CPO. The suspension or debarment may extend to all entities with common ownership or common management as the Vendor that has been suspended or debarred and may include work undertaken by the debarred Vendor (or such related entity) as a subcontractor or materialman, as determined by the CPO on a case by case basis. JEA has the option to debar a Vendor at any time depending on the egregiousness of their actions, and is not required to issue a First or Second offense as described above.

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

- (a) recite relevant facts material to the Chief Procurement Officer's decision;
- (b) state the reasons for the decision;
- (c) state whether the Vendor is a suspension or debarment;
- (d) state the timeframe for suspension or debarment; and
- (e) inform the suspended or debarred Vendor involved of any rights to administrative review as provided in this Article 5.

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

#### **4-103 Creation of the Procurement Appeals Board**

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

#### **4-104 Procurement Appeals Board Procedures**

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

come before the Procurement Appeals Board unless the discussion occurs in a meeting held in accordance with Florida's Open Meeting Laws.

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

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

#### **4-105 Authority of Procurement Appeals Board**

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

- (a) Section 4-101 (Protests) of this Code; or
- (b) Section 4-102 (Suspensions and Debarments) of this Code.

The Procurement Appeals Board is not authorized to intercede in, or hear Appeals relating to, Determinations made in connection with Vendor disputes regarding performance under a Contract, other than the authority granted to review and make decisions regarding Appeals of Suspensions or Debarments as provided in Section 4-102 of this Code.

#### **4-106 Appeals**

(1) *Appeal Submittal.* A Vendor seeking to appeal a decision of the Chief Procurement Officer under Section 4-101 or 4-102 of this Code shall submit its appeal in writing by letter or email to the Chief Procurement Officer in accordance with the timeliness and other requirements set forth in this Section 4-106 (an "Appeal"). The Appeal shall clearly state the following:

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

(2) *Timeliness and Standing.* An Appeal relating to a decision of the Chief Procurement Officer under Section 4-101 of this Code must be received by the Chief Procurement Officer no later than three Business Days after issuance of a written decision by the Chief Procurement Officer. An Appeal relating to a decision of the Chief Procurement Officer under Section 4-102 of this Code must be received by the Chief Procurement Officer no later than 15 days after issuance of a decision by the Chief Procurement Officer under Section 4-102. To have standing to Appeal, a Vendor must have been adversely affected by such decision.

(3) Failure to submit a timely Appeal or to have standing to Appeal under subsections (1) and (2) of this Section 4-106 shall result in dismissal of the Appeal and constitute a waiver of all rights to appeal a decision of the Chief Procurement Officer. A Determination of whether an Appeal meets the requirements

of subsections (1) and (2) shall be made by the chair of the Procurement Appeals Board and is not subject to appeal to the Procurement Appeals Board.

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

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

#### **4-107 Review of Appeals**

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

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

#### **4-108 Standard of Review for Procurement Appeals Board**

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

- (i) in conflict with this Code and the Operational Procedures;

- (ii) arbitrary;
- (iii) capricious;
- (iv) dishonest;
- (v) fraudulent;
- (vi) clearly erroneous;
- (vii) illegal; or
- (viii) without any basis in fact or otherwise must be reversed based on applicable law.

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

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

(4) The Procurement Appeals Board shall deliberate at the meeting held to consider the Appeal and announce its decision prior to adjourning the meeting. The decision of the Procurement Appeals Board shall be final and binding. Following the adjournment of the meeting, the Procurement Appeals Board will issue a written decision within three (3) business days.