PROCUREMENT POLICY

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TABLE OF CONTENTS

FOREWORD 4

SECTION 1: GENERAL PROVISIONS 5

Section 1.0 Purpose 5

Section 1.1 Code of Conduct 5

Section 1.2 Procurement Code of Conduct 6

Section 1.3 Prohibited Activity 7

Section 1.4 Acceptable Activity 7

Section 1.5 Applicability 8

Section 1.6 Exceptions to Policy 8

Section 1.7 Supplementary General Principles of Law Applicable 9

Section 1.8 Definitions 9

Section 1.9 Requirements of Good Faith 15

Section 1.10 Confidential Information 15

SECTION 2: AUTHORITY 16

Section 2.0 Legal Authority 16

Section 2.1 Airport Authority Board 16

Section 2.2 President 16

Section 2.3 Department of Procurement 17

Section 2.4 Authority of the Chief Procurement Officer 17

SECTION 3: SOURCE SELECTION AND CONTRACT FORMATION 17

Section 3.0 Competitive Selection Required 17

Section 3.1 Small Purchases 18

Section 3.2 Formal Competitive Purchases 18

Section 3.3 Competitive Sealed Proposals 23

Section 3.4 Request for Qualifications 25

Section 3.5 Reverse Auctions 25

Section 3.6 Cancellation of Solicitations. 26

Section 3.7 Rejection of Individual Bids, Proposals, Quotations or Statement of Qualifications 28

Section 3.8 Responsiveness of Bidders, Offerors and Respondents 28

Section 3.9 Exceptions to Full and Open Competition. 29

SECTION 4: SPECIFICATIONS 30

SECTION 5: CONTRACT TERMS 31

SECTION 6: CONTRACT EXECUTION 31

SECTION 7: CONTRACT ADMINISTRATION 32

SECTION 8: COOPERATIVE PROCUREMENT AND PURCHASES THROUGH STATE AND OTHER GOVERNMENTS 32

SECTION 9: MINORITY, WOMEN-OWNED, SMALL BUSINESS PARTICIPATION 33

SECTION 10: PROCUREMENT CARD 34

SECTION 11: MATERIALS MANAGEMENT, SURPLUS AND AUCTION 34

SECTION 12: DONATIONS 36

SECTION 13: LEGAL AND CONTRACTUAL REMEDIES 36

SECTION 14: HEARING BEFORE PROCUREMENT APPEALS COMMITTEE 41

SECTION 15: AUTHORITY TO DEBAR OR SUSPEND 41

SECTION 16: FUNDING SOURCES 45

SECTION 17: ADDITIONAL PROVISIONS 45

FOREWORD

The Department of Procurement is responsible for the Authority's procurement of Goods, Services, and Construction necessary to support the Authority's administrative function, maintenance, operations, and revenue generation. A professional staff issues solicitations and/or negotiates and administers contracts to deliver Goods, Services, and Construction in a timely manner. Additional responsibilities of the Department of Procurement include the administration and operation of warehouse facilities and commodities; central receiving of all equipment and materials; pCard Program and control, management, and disposition of surplus personal property. The primary objectives of the Authority's procurement function are to maximize value to the Authority; provide quality service; ensure compliance with applicable legal requirements; and support the Authority's Business Diversity Development program.

This Policy has been prepared for use by the Authority and other interested parties. In addition to this Policy, supplemental Procurement Policies may be established which shall not be in conflict with this Policy. This Policy supersedes existing Authority policies and procedures relating to the procurement of Goods, Services, and Construction.

PROCUREMENT POLICY

SECTION 1: GENERAL PROVISIONS

The Metropolitan Nashville Airport Authority ("Authority") has adopted organizational values of Integrity, Service, Innovation and Teamwork. In addition to the Authority's global values, this Policy recognizes the Values and Guiding Principles of the Public Procurement profession: Accountability, Ethics, Impartiality, Professionalism, Service and Transparency. Together, these collective values frame the culture of the Authority and flow throughout its various policies and procedures.

1.0 PURPOSE

The purpose of this Procurement Policy ("Policy") is to ensure that all Goods, Services, and Construction are procured efficiently, effectively, and at the most favorable prices, or of the best quality, as applicable, available to the Authority. All procurement conducted by the Authority shall be done in consideration of the overall value to the Authority, which may include cost, quality, delivery, ACDBE, SMWBE or DBE participation, and other applicable factors where appropriate. This Policy is designed to promote full and open competition to the maximum practical extent, providing safeguards for maintaining procurement process quality and integrity, and to ensure that the Authority's procurement actions are compliant with applicable laws, statutes, policies, and procedures. This Policy seeks to ensure the fair and equitable treatment, as well as to provide reliability and predictability in all the interactions between and among all Bidders, Respondents, and Contractors competing for Contract Awards and the Authority's employees.

It is the Authority's policy that a centralized system for the acquisition of Goods, Services and Construction be utilized for consistent procurement practices, protection of agency risk, assurance of maximum quality and value, and acquisitions conducted in a timely and cost-effective manner that complies with all applicable laws, statutes, policies and procedures. Any purchase, contract, or obligation to pay made other than in the manner described in this Policy will subject the implicated individuals to financial and/or criminal liability and disciplinary action, up to and including termination.

1.1 CODE OF CONDUCT

Employees of the Authority are required to abide by this Code of Conduct. Consistent with the Third Amended and Restated Bylaws of the Board of Commissioners of the Metropolitan Nashville Airport Authority, employees of the Authority shall comply with the following specific limitations upon their involvement in the procurement of Goods, Services, and Construction by the Authority:

(A) No employee of the Authority shall be directly interested in any contract to which the Authority is a party or which is to be paid for by the Authority. "Directly Interested" means any contract with any business in which a person is the sole proprietor, a partner, or the person having the controlling interest. The term "controlling interest" includes the individual with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation;

(B) No employee of the Authority shall be indirectly interested in any contract to which the Authority is a party or which is to be paid for by the Authority unless the employee publicly acknowledges this interest and recuses himself or herself from duties involving the contract, which may include considering, voting on, overseeing, or supervising the particular contract. "Indirectly Interested" means any contract in which the person is interested but not directly so, including contracts where those persons are directly interested but are the sole supplier of Goods or Services in the Authority's service area. An indirect financial interest also includes a direct interest on the part of an immediate family member of an employee. "Immediate family member" means a parent, sibling, spouse or child of an employee; and

(C) No employee of the Authority shall directly or indirectly use, disclose or allow the use of confidential information which was obtained through or in connection with his or her Authority employment, and which has not been made available to the general public for the purpose of furthering the private interest or personal profit of any person, including the employee, or engage in a financial transaction as a result of, or primarily relying upon, information obtained through his or her Authority employment.

1.2 PROCUREMENT CODE OF CONDUCT

Employees of the Department of Procurement, or any other employee of the Authority who has been delegated procurement responsibilities, shall comply with the following rules of professional conduct:

(A) Act impartially and with the highest degree of integrity to foster public confidence in the Authority, and make every effort to ensure open and fair competition for available businesses in accordance with this Policy and the applicable policies of the Authority;

(B) Conduct himself or herself in a courteous and professional manner with the Authority's internal customers, vendors and passengers with whom he or she comes into contact, striving always to act objectively and without discrimination or bias of any form;

(C) Not willfully or unlawfully conceal, remove, mutilate, falsify or destroy any government document or record, nor will he or she make any false or fictitious statements in connection with any official matter, document or record;

Violation of any provision of this Policy may be cause for disciplinary action. Disciplinary action may range from an oral reprimand to dismissal from Authority service, depending upon the degree of violation. Furthermore, the Authority reserves all rights to pursue appropriate legal action to the fullest extent permitted by law.

1.3 PROHIBITED ACTIVITY

Except as provided in Section 1.4, no employee shall solicit or accept, directly or indirectly, on behalf of himself, herself, or any immediate family member of the employee, any gift, gratuity, service, favor, entertainment, lodging, transportation, loan, loan guarantee, or any other thing of monetary value from any person who:

(A) has, or is seeking to obtain, contractual or other business or financial relations with the department of the Authority in which such employee is employed;

(B) conducts operations or activities that are regulated by the department of the Authority in which such employee is employed; or

(C) has interests which may be substantially affected by the performance or nonperformance of such employee's official duties.

Employees and other individuals representing the Authority shall comply with all requirements and shall be subject to the Authority's Human Resources Policy and Process Manual. Employees and other individuals representing the Authority shall act in fairness, free of any hidden personal or financial interest, free from improper influence or the appearance of improper influence.

Employees who fail to adhere to this Policy may be subject to disciplinary action, up to and including termination. Employees who make or authorize expenditures in violation of this Policy may be held financially responsible for the expenditure.

This Procurement Code of Conduct supplements the provisions contained in the Authority's Human Resources Policy and Process Manual regarding conflicts of interest.

1.4 ACCEPTABLE ACTIVITY

Acceptance of the following is not prohibited by this Procurement Code of Conduct:

(A) Gifts, entertainment, or favors from family members or friends of long standing when the relationship clearly has no business interest as a motivating factor. If any

relationship with the donor exists or subsequently arises that could be perceived as affecting the business interests of the Authority, any gift, entertainment, or favor which exceeds One Hundred Fifty Dollars ($150.00) in value shall be disclosed by the employee in a letter to the President as to the nature and value of the gift, entertainment, or favor;

(B) Loans from established financial institutions made in the ordinary course of business on usual and customary terms, so long as there are no guarantees or collateral provided by any person;

(C) Advertising or promotional material with a value not exceeding One Hundred Fifty Dollars ($150.00) in each instance, such as pens, pencils, note pads, key chains, calendars, and similar items;

(D) Business meals, entertainment, or gifts with a value not exceeding One Hundred Fifty Dollars ($150.00) in each instance, which are customary in the business community or the airport and airline industries and when the employee is attending in an official capacity relating to his or her office, including meals and entertainment which are part of the employee's participation in a charitable, civic, or community event in furtherance of such employee's official duties;

(E) Discounts or rebates on merchandise or services with a value not exceeding One Hundred Fifty Dollars ($150.00) in each instance or that do not exceed those available to the general public;

(F) Gifts with a value not exceeding One Hundred Fifty Dollars ($150.00) in each instance related to commonly recognized events or occasions, such as a promotion, new job, wedding, retirement, etc.; and

(G) Civic, charitable, educational, or religious organization awards for recognition of service and accomplishment.

This Procurement Code of Conduct supplements the provisions contained in the Human Resources Procedures Manual regarding conflicts of interest.

1.5 APPLICABILITY

The provisions of this Policy shall apply to the following:

(A) Every expenditure of the Authority's funds, irrespective of funding source, including federal assistance funds;

(B) Disposal of the Authority's property.

1.6 EXCEPTIONS TO POLICY

Despite any other provision of this Policy, the items listed in this section are exempt from the requirements of the open, competitive process but shall comply with other provisions of this Policy. Exceptions to the open, competitive process does not excuse the requestor from acquiring the appropriate approval to purchase as well as appropriate contracting

and/or payment documentation. Exception purchases may be solicited and contracted for by the Department of Procurement, as shall be deemed appropriate.

The following are exceptions to this Policy:

(A) Agreements negotiated by the Authority's Legal Counsel in settlement of litigation or threatened litigation;
(B) Purchases of materials for resale in a concession operation;
(C) Memberships, subscriptions, advertising (media buys)
(D) Purchase, sale or lease of real property
(E) Purchase of legal services
(F) Development agreements
(G) Travel, including lodging, and other expenses
(H) Financial services (bond issuance, short-term financing, insurance policies)
(I) Other specific exceptions as otherwise provided in this Procurement Policy

1.7 SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE

Unless displaced by the particular provisions of this Policy, the principles of law and equity, including the Uniform Commercial Code of the State of Tennessee, the common law of contracts as applied in this state and law relative to agency, fraud, misrepresentation, duress, coercion and mistake supplement the provisions of this Policy. Adherence to this Policy does not absolve compliance with any other policies or regulations related to a particular funding source. This Policy applies to all individuals involved in the sourcing process for the Authority's expenditures.

1.8 DEFINITIONS

In this Policy, the following definitions apply unless the context otherwise requires:

(A) "*Airport*" means the Nashville International Airport and/or John C. Tune Airport, individually or collectively, as the context may require.

(B) "*Architect/Engineer Services*" means the following:

(i) Professional Services of an architectural or engineering nature, as defined by state law, which are required to be performed or approved by a person licensed, registered, or certified to provide such services;

(ii) Professional Services of a planning, architectural, or engineering nature that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

(iii) Such other Professional Services of a planning, programming, architectural, or engineering nature, or incidental services thereto, which such professionals

(and individuals in their employ) may logically or justifiably perform, including, without limitation, studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, construction management at risk, soils engineering, drawing reviews, environmental inspections, preparation of operating and maintenance manuals, and other related services.

(C) "*Award*" means a determination by the Authority to award a contract in accordance with the provisions contained in the solicitation, this Policy, the Bylaws, and as otherwise required by law.

(D) "*Authority*" means the Metropolitan Nashville Airport Authority.

(E) *"Best value"* means a technique in the competitive sealed bid process which permits the evaluation of objective criteria to determine the best overall value to the Authority.

(F) "*Bid*" means an offer submitted in response to an Invitation to Bid.

(G) "*Bidder*" means a person or entity that submits a Bid.

(H) "*Board*" means the set of individuals appointed in accordance with applicable law to govern the Authority.

(I) *"Business"* means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

(J) *"Bylaws"* means the Third Amended and Restated Bylaws of the Metropolitan Nashville Airport Authority, or the most recently amended Bylaws approved by the Board.

(K) "*Change order"* means a written alteration to a contract or purchase authorized by the CPO which directs the contractor to make changes with or without the consent of the contractor.

(L) *"Chief Procurement Officer" (CPO)* means the person holding the position as head of the department of procurement, delegated the centralized authority to procure Goods, Services, and Construction for the Authority. In the absence of the CPO, the President may designate an individual to fulfill this role.

(M) "*Construction*" means the utilization of labor and materials to build and/or significantly alter, repair, improve, or demolish any building or other real

property; generally does not apply to routine maintenance, repair, or operation of existing property.

(O) "*Contract*" means a written agreement between the Authority and any entity, including, without limitation, a contract, lease, amendment, supplemental agreement, change order or purchase order for the procurement of Goods, Services, and Construction or the disposal of materials.

(P) *"Contract amendment"* means any written alteration to a contract accomplished by mutual action of the contract parties.

(Q) "*Contractor*" means any person who has a contract with the Authority.

(R) "*Contractors Act*" means the Tennessee Contractors Licensing Act of 1994, T.C.A. § 62-6-101, *et seq*., as amended from time to time.

(S) *"Days"* means, unless otherwise specified, calendar days.

(T) "*Department Head*" means any person employed by the Authority in the position of Director, Assistant Vice-President, Vice-President, Senior Vice-President, or President.

(U) *"Designee"* means a duly authorized representative of the CPO, designated by the CPO.

(V) "*Discretionary*" means the power or right in certain circumstances to follow the dictates of individual best professional judgment and conscience in the selection of a supplier to determine whether competition and written documentation are appropriate, considering the requirements of this Policy and the Authority's interests.

(W) *"Discussions"* means communication with an Offeror, Bidder or Respondent for the purpose of:

i. Eliminating minor irregularities, informalities, or apparent clerical mistakes in the offer or response;
ii. Clarifying any offer or response to assure full understanding of, and responsiveness to, solicitation requirements;
iii. Resolving minor variations in contract terms and conditions; or
iv. Establishing the competency or financial stability of any Offeror, Bidder or Respondent.

(X) *"Disposal of Material"* means sale of surplus and unclaimed property by public auction, competitive sealed bidding, small purchase procedures or other appropriate method designated by this Policy.

(Y) *"Electronic"* means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

(Z) "*Emergency*" means a sudden, unforeseeable, and unexpected occurrence involving a clear and imminent danger, including, without limitation, weather conditions, fire, flood, earthquake, and the breakdown or imminent breakdown of any plant, equipment, structure, pavement, or improvement necessitating immediate repair, reconditioning, or purchase to prevent or mitigate loss of or damage to life, health, property, or essential public services, or to maintain the public health or welfare.

(AA) "*Emergency Purchase*" means an immediate purchase of Goods, Services, and Construction made necessary due to an Emergency, for which the usual formal competitive solicitation procedures are waived.

(BB) "*Fair Market Value*" means the amount a knowledgeable buyer would pay and a willing seller would accept for a good or service.

(CC) "*Formal Competitive Process*" mean a procurement and selection process that includes, at a minimum, a written solicitation, advertisement of the solicitation, written responses, a review process and award to a vendor.

(DD) *"Goods"* means goods, materials, equipment or anything purchased or available for purchase, other than Services or real property.

(EE) "*Improvement*" means any erection, construction, renovation, alteration, improvement, demolition, excavation, installation, or repair of or to any building, structure, infrastructure, utility, or similar facility performed for or on behalf of the Authority.

(FF) "*Informal Competitive Process*" means a procurement and selection process with a documented verbal, electronic, or written solicitation and response, but for which formal advertisement is not required, resulting in award to a vendor.

(GG) *"In writing"* includes printing, typewriting, electronic transmission, facsimile, or any other intentional reduction to tangible form.

(HH) "*Intangible Personal Property*" means property that is not capable of manual or physical possession.

(II) "*Invitation to Bid*" means all documents, written or electronic, whether attached or incorporated by reference, which are used for formally soliciting Bids in

accordance with the procedures prescribed in this Policy.

(JJ) *"Materials"* means all property, including but not limited to, equipment, goods, supplies, and buildings but does not include land, a permanent interest in land or leases of real property.

(KK) *"Minor informality"* means mistakes, or non-judgmental errors, that have negligible effect on price, quantity, quality, delivery, or other contractual terms and the waiver or correction of such mistakes does not prejudice other Bidders, Offerors or Respondents.

(LL) *"Negotiations"* means an exchange of information or any form of cooperation during which the Offeror and the Authority may alter or otherwise change the scope of work, conditions, terms, and price, unless prohibited, of the proposed contract.

(MM) "*Offeror*" means an individual or firm who submits a proposal in response to a formal Request for Proposal process.

(NN) "*Policy*" means this formally adopted Procurement Policy of the Authority.

(OO) "*President*" shall mean the chief executive and administrative officer of the Authority responsible for the day-to-day operation, planning and development of the Authority as defined in the Bylaws.

(PP) "*Procedures*" shall mean the procurement procedures, as approved by the President, which detail the series of related activities that must be completed, and the order in which they must be done, to acquire Goods, Services, and Construction for the Authority.

(QQ) *"Procurement"* means buying, purchasing, renting, leasing or otherwise acquiring any Goods, Services, or Construction. Procurement also includes all functions that pertain to the acquisition of any Goods, Services, and Construction including description of requirements, selection and solicitation of sources, preparation, negotiation and award of contract, and all phases of contract administration.

(RR) "*Procurement Appeals Committee (PAC)*" means a committee comprised of Authority employees designated to hear and make decisions on Protest Appeals, Suspension Appeals or Debarment Appeals.

(SS) "*Procurement Card (pCard)*" means a payment card issued by a bank or major credit card provider, which is provided to Authority staff under specific delegated

authority, limited for the purchase of Goods, Services, and Construction in accordance with the Authority's Procurement Card Policy.

(TT) "*Procurement/Department of Procurement*" means the Authority's designated procurement staff authorized and responsible for overall procurement management of Goods, Services, and Construction, including source selection, contract execution, spend management, supplier management and all related procurement activity.

(UU) "Professional Services", means medical services, technology services, accounting services, fiscal agency services, financial advisory services, educational consulting services, architectural and engineering services, and any similar services, by professional persons who must meet licensure or permit requirements of local, state, or federal governmental regulatory entities to render such services.

(VV) "*Property*" means tangible personal property that is capable of manual or physical possession, but that is not real estate.

(WW) "*Protest*" means a written statement filed with the CPO by a Protesting Party alleging, with particularity, the legal grounds and factual basis for a claim that the Authority's decision in connection with a Solicitation, Award, Suspension or Debarment is arbitrary or capricious or in violation of applicable law.

(XX) "*Protesting Party*" means a person or entity that files a protest with the CPO arising out of a solicitation, award, suspension or decision to debar.

(YY) "*Public Notice*" means the distribution and dissemination of information to interested parties using methods that are reasonably available, based on the totality of circumstances. Such methods may include publication in newspapers of general circulation, dissemination by electronic or paper mailing lists, and the posting on any website designated by the Authority.

(ZZ) *"Request for Proposals"* means all documents, written or electronic, whether attached or incorporated by reference, which are used for soliciting competitive proposals in accordance with this Policy.

(AAA) *"Request for Qualifications"* means all documents, written or electronic, whether attached or incorporated by reference, which are used for formally soliciting qualifications from Respondents in accordance with this Policy.

(BBB) *"Request for Quotation"* means an informal process where oral or written quotes are obtained from vendors, without formal advertising or receipt of sealed Bids.

(CCC) "*Respondent*" means a person or entity that submits a response to a formal Request for Qualifications.

(DDD) *"Responsible Bidder, Offeror, or Respondent"* means a person who has the capability to perform the contract requirements and the integrity and reliability which will assure good faith performance.

(EEE) *"Responsive Bidder, Offeror, or Respondent"* means a person who submits a bid or proposal which conforms in all material respects to the solicitation.

(FFF) *"Reverse Auction"* means an electronic auction in which the role of the buyer and seller are reversed. In a Reverse Auction, sellers compete to obtain business. Bids are publicly posted throughout the auction to encourage competition.

(GGG) *"Services"* means the furnishing of labor, time or effort by a contractor, consultant, subcontractor or sub-consultant which does not involve the delivery of a specific end product other than required design documents or reports and performance. Services do not include employment agreements or collective bargaining agreements. The definition of Services includes, but is not limited to, consulting, personal, professional, legal counsel, auditing, technical, Professional Design Services and Construction.

(HHH) "*Single Source*" means a procurement whereby purchases are directed to one source because of standardization, warranty, or other factors, even though other competitive sources may be available.

(III) "*Sole Source*" means a product or service which is available only from one source.

(JJJ) "*Specification*" is used interchangeably with "scope", "scope of services", or "scope of work" and means any description of the physical or functional characteristics, or of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing, or preparing a material, service, or construction item for delivery.

(KKK) *"Solicitation"* means an Invitation to Bid, a Request for Proposals, a Request for Qualifications, a Request for Quotations, an Invitation for Reverse Auction Bids or any other invitation or request by which the Authority invites a person to participate in a procurement.

(LLL) "*Subcontractor or Subconsultant"* means a person who contracts to perform work or render service to a contractor or consultant as defined by this section or to another subcontractor or subconsultant as a part of a contract with the Authority.

(MMM) "*Treasurer*" means the Chief Financial Officer of the Authority.

1.9 REQUIREMENT OF GOOD FAITH

This Policy requires all parties involved in the negotiation, performance, or administration of Authority contracts to act in good faith.

1.10 CONFIDENTIAL INFORMATION

Confidential information shall be designated as follows:

(A) If a person believes that a bid, proposal, offer, specification, or protest contains information that should be withheld from public record, a statement advising the CPO of this fact should accompany the submission and the information shall be so identified wherever it appears.

(B) The information identified by the person as confidential may not be disclosed until the CPO makes a written determination.

(C) The CPO shall review the statement and information and may determine in writing that the information shall be withheld or disclosed.

(D) If the CPO determines to disclose the information, the contract officer shall inform the person in writing of such determination.

(E) Notwithstanding the above provisions, in the event records marked as confidential are requested for public release, the Authority shall release records marked confidential seven (7) working days after the date of notice to the person of the request for release, unless the person has, within the seven-day period, secured a protective order, injunction relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records.

(F) The Authority shall not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked confidential. Nor shall the Authority be in any way financially responsible for any costs associated with securing such an order.

SECTION 2: AUTHORITY

2.0 LEGAL AUTHORITY

This Policy is promulgated pursuant to the Metropolitan Airport Authorities Act, Tennessee Code Annotated § 42-4-101, *et seq.*, and is intended to comply with the requirements of the Amended and Restated Bylaws of the Board of Commissioners of the Metropolitan Nashville Airport Authority, as amended from time to time (the "Bylaws"). To the extent a conflict exists between the Bylaws and this Policy, the Bylaws shall control.

2.1 AIRPORT AUTHORITY BOARD

The Bylaws contain the delegation of contracting authority by the Board of Commissioners of the Authority to the President and Chief Executive Officer (the "President").

2.2 PRESIDENT

The President is ultimately responsible for the Authority's operations and employees' compliance with this Policy. The President shall approve or deny procurements between $100,000 and the threshold established in the Bylaws. The President may delegate his or her contracting authority up to $100,000 to any officer of the Authority so long as such delegation does not exceed the value and/or contract term designated in the Bylaws. All delegation shall be in writing and such written record of the delegations and corresponding approval levels shall be maintained by Procurement. All procurements exceeding the President's contract authority, as well as any contracts exceeding an eight (8) year contract term, shall be submitted to the Board for approval.

2.3 DEPARTMENT OF PROCUREMENT

The Department of Procurement is delegated the responsibility for handling all procurements, including finalizing Contract documents with Legal Counsel guidance, and in compliance with this Policy, all applicable laws and regulations. The Department of Procurement is also responsible for creating, maintaining and complying with written procurement procedures needed to effectuate this Policy.

2.4 AUTHORITY OF THE CHIEF PROCUREMENT OFFICER (CPO)

Except as otherwise provided in this Policy, the CPO, in consultation with the President, may adopt operational procedures, consistent with this Policy, governing the procurement and management of all Goods, Services, and Construction procured by the Authority and the disposal of materials.

The CPO shall serve as the central procurement and contracting authority of this Authority. Except as otherwise provided in this Policy, the CPO shall:

(A) Procure or supervise the procurement of all Goods, Services, and Construction needed by the Authority.
(B) Establish guidelines for the management of all inventories of materials belonging to this Authority.
(C) Manage the disposal of materials belonging to the Authority.
(D) Sell, trade or otherwise dispose of surplus materials belonging to the Authority.
(E) Prepare, issue, revise, maintain, and monitor the use of specifications for Goods, Services, and Construction required by the Authority.
(F) Manage the Authority's procurement card (pCard) program.

The CPO may delegate procurement authority to designees or to any department or official of the Authority; any such delegation shall be in writing and kept on file by the CPO. The CPO may determine in writing that non-compliance with any provision of this Policy is non-substantial and may allow for correction or may waive minor informalities or irregularities. The basis for the decision shall be included in the determination.

SECTION 3: SOURCE SELECTION AND CONTRACT FORMATION

3.0 COMPETITIVE SELECTION REQUIRED.

Subject to Section 1.6, competitive selection is required for the procurement of all Goods or Services over the Small Purchase threshold, or as otherwise required by controlling law and/or regulation.

3.1 SMALL PURCHASES

3.1.1 Small Purchases: A Small Purchase is any contract not exceeding $50,000, or $100,000 for construction contracts utilizing federal funds as allowed under federal regulations. Small Purchases may be made in accordance with the Small Purchase procedures authorized in this Policy and any corresponding procurement procedure. Purchase requirements shall not be artificially divided so as to constitute a Small Purchase under this Policy.

3.1.2 Small Purchases under Ten-Thousand ($10,000) Dollars - The CPO shall adopt operational procedures for making Small Purchases of less than ten thousand dollars ($10,000.00). The requestor shall utilize discretionary selection with best professional judgment to obtain the best value for the Authority, considering the requirements of this Policy, supplemental procurement procedures and the Authority's interests. Competition is not required, but the selection should be justifiable as the best overall solution, considering cost and other permissible factors.

3.1.3 Small Purchases Ten Thousand ($10,000.00) – Fifty-Thousand ($50,000.00) Dollars - Insofar as it is practical, Small Purchases of ten-thousand dollars ($10,000.00) to fifty-thousand ($50,000.00) shall be solicited by the Department of Procurement from no less than three (3) businesses. Award shall be made to the responsible Respondent, whose offer is most advantageous to the Authority and conforms in all material respects to the Small Purchase requirements. The responses shall be maintained as a public record.

3.2 FORMAL COMPETITIVE PURCHASES

3.2.1 Purchases exceeding the Small Purchase threshold - Purchases that exceed the Small Purchase threshold shall be made in accordance with one of the procedures authorized in this Policy and the corresponding Procurement Procedures.

3.2.2 Competitive Sealed Bidding (Non-Construction)

(A) Competitive sealed bids shall be solicited through an Invitation to Bid. The Invitation to Bid shall include specifications and any applicable evaluation criteria. Contractual terms and conditions may be included within the solicitation document or incorporated by reference.

(B) A prequalification process may be conducted prior to the issuance of an Invitation to Bid in order to establish a list of qualified Bidders. In the event a prequalification process is used, the Department of Procurement shall only consider bids that are submitted from prequalified Bidders.

3.2.2.1 Public Notice - Notice of the Invitation to Bid shall be electronically posted and the Invitation to Bid shall be available for public inspection not less than fourteen (14) days prior to the date set forth therein for the opening of bids. A

shorter time may be deemed necessary for a particular procurement as determined in writing by the CPO. The public notice shall state the place, date, and time of bid opening.

3.2.2.2 Late Bids - A bid is late if it is received at the location designated in the Invitation to Bid after the time and date set for bid opening. The clock of the department receiving the bid, or the clock of the system used to electronically receive the bid, is the governing clock. A late bid shall be rejected. A late bid shall not be opened except for, if necessary, identification purposes. Such bids may be returned to the Bidder. Bidders submitting bids that are rejected as late shall be so notified.

3.2.2.3 Bid Opening - Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation to Bid. The name of each Bidder and the amount of each bid, as well as other relevant information as the CPO deems appropriate shall be recorded. Unless otherwise determined by the CPO, this record shall be open to public inspection. If the Bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with Section 1.9.

3.2.2.4 Bid Acceptance and Bid Evaluation - Bids shall be accepted without alteration or correction, except as authorized in this Policy. Bids shall be evaluated based on the requirements set forth in the Invitation to Bid, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The Invitation to Bid shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the Invitation to Bid.

3.2.2.5 Correction or Withdrawal of Bids; Cancellation of Awards - Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the Department of Procurement prior to the time set for bid opening.

Mistakes discovered after bid opening may be modified or withdrawn only to the extent that the Bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other bid provisions prejudicial to the interest of the Authority or fair competition shall be permitted. In lieu of bid correction, a Bidder alleging a mistake may be permitted to withdraw its bid if:

(A) The mistake is clearly evident on the face of the bid document but the

intended correct bid is not similarly evident; or

(B) The Bidder submits evidence that clearly and convincingly demonstrates that a mistake was made.

All decisions to permit the correction or withdrawal of bids, or to cancel awards based on bid mistakes, shall be supported by a written determination made by the CPO.

3.2.2.6 Right to Reject Any or All Bids or Responses

In accordance with applicable laws and regulations, the CPO shall have the right to reject all bids or responses submitted in such solicitation. The terms of all solicitations may reserve this right, but the failure to make an express reservation of the right of the Authority to reject all bids or responses shall not abrogate the right of the Authority to do so.

3.2.2.7 Contract Award

(A) General - The contract shall be awarded by appropriate notice to the lowest responsible and responsive Bidder whose bid conforms in all material respects to requirements and criteria set forth in the Invitation to Bid.

(B) Contract award based on best value - Notwithstanding the above, the contract may be awarded on best value analysis provided that the criteria for analysis was included in the Invitation to Bid in accordance with Section 3.2.2.4. The contract shall be awarded by appropriate written notice to the responsive, responsible Bidder whose bid is determined to be the best value to the Authority and that conforms in all material respects to requirements and criteria set forth in the Invitation to Bid.

(C) Public record - After the Authority issues a notice of intent to award, or in the absence of a notice of intent to award upon final contract execution, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the Bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with Section 1.9.

(D) Low tie bids - If there are two (2) or more low responsive bids from responsible Bidders that are identical in price and other evaluation criteria and that meet all the requirements and criteria set forth in the Invitation to Bid, award may be made by random selection in a manner prescribed by the CPO.

3.2.3 Competitive Sealed Bidding (Construction)

The CPO shall establish procurement procedures, in conjunction with the Chief Engineer, for the procurement of Construction. A Contract for Construction that is federally

funded, in whole or in part, is to be procured by the provisions contained in 29 C.F.R. Part 18.36, governing procurement by sealed bid or other appropriate federal statute or regulation. For any other Contract for Construction estimated to cost more than One Hundred Thousand ($100,000.00), or such amount proscribed by law, procurement by Competitive Sealed Bidding using an Invitation to Bid shall be utilized.

3.2.3.1 Invitation to Bid Specifications, Evaluation Criteria and Bidder Qualifications - The Invitation to Bid shall include specifications, any applicable evaluation criteria and Bidder qualifications requirements. Contractual terms and conditions may be included within the solicitation document or incorporated by reference. The CPO shall require, from all Bidders, information concerning their experience and financial qualifications and shall take such information into consideration in the Award of any Construction contract. At a minimum, the CPO shall require: (i) information concerning each Bidder's experience, financial qualifications, and ability to perform the terms and conditions of the Construction Contract; and (ii) information as to whether the Bidder possesses or can obtain the necessary equipment and personnel in time to perform the Construction contract.

3.2.3.2 Public Notice - Notice of the Invitation to Bid shall be published in at least one local newspaper or periodical of general circulation in the applicable industry (as applicable under federal regulations) and electronically posted on the Authority's website. Notice of the Invitation to Bid shall be issued, and the Invitation to Bid shall be available for public inspection, not less than fourteen (14) days prior to the date set forth therein for the opening of bids. A shorter time may be deemed necessary for a particular procurement as determined in writing by the CPO. The public notice shall state the place, date, and time of bid opening.

3.2.3.3 Contractors Act - Each Bidder must comply with the requirements of the Contractors Act, and each Bidder's Bid will be subject to and handled in accordance with the provisions of the Contractors Act.

3.2.3.4 Late Bids - A bid is late if it is received at the location designated in the Invitation to Bid after the time and date set for bid opening. The clock of the department issuing the bid, or the clock of the system used to electronically receive the bid, is the governing clock. A late bid shall be rejected. A late bid shall not be opened except for, if necessary, identification purposes. Such bids may be returned to the Bidder. Bidders submitting bids that are rejected as late shall be so notified.

3.2.3.5 Bid Opening - Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation to Bid. The name of each Bidder and the amount of each bid, as well as other relevant information as

the CPO deems appropriate, and as required by the Contractors Act, shall be recorded. Unless otherwise determined by the CPO, this record shall be open to public inspection. If the Bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with Section 1.9.

All decisions to permit the correction or withdrawal of a Bid, or to cancel any Award based on errors contained in a Bid, shall be supported by a written explanation made by the CPO.

3.2.3.6 Bid Acceptance and Bid Evaluation - Bids shall be accepted without alteration or correction, except as authorized in this Policy. Any criteria that will affect the Bid price and be considered in the Award, such as discounts, transportation costs, and total or life cycle costs, shall be objectively measured. Bids shall be evaluated objectively based on the requirements set forth in the Invitation to Bid. The Invitation to Bid shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the Invitation to Bid.

3.2.3.7 Correction or Withdrawal of Bids; Cancellation of Awards - Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received by the CPO prior to the time set for bid opening.

Mistakes discovered after bid opening may be modified or withdrawn only to the extent that the Bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other bid provisions prejudicial to the interest of the Authority or fair competition shall be permitted. In lieu of bid correction, a Bidder alleging a mistake may be permitted to withdraw its bid if:
(A) The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
(B) The Bidder submits evidence that clearly and convincingly demonstrates that a mistake was made.

All decisions to permit the correction or withdrawal of bids, or to cancel awards based on bid mistakes, shall be supported by a written determination made by the CPO.

3.2.3.8 Contract Award
(A) General - The contract shall be awarded by appropriate notice to the

lowest responsible and responsive Bidder whose bid conforms in all material respects to requirements and criteria set forth in the Invitation to Bid. A contract award shall be made in accordance with the provisions of this Policy, the Bylaws, the related construction procurement procedures and as otherwise required by controlling law or regulation

(B) Contract Award Based on Best Value – Nothwithstanding the above, the contract may be awarded on best value analysis provided that the criteria for analysis was included in the Invitation to Bid, in accordance with Section 3.2.3.6. The contract shall be awarded by appropriate written notice to the responsive, responsible Bidder whose bid is determined to be the best value to the Authority and that conforms in all material respects to requirements and criteria set forth in the Invitation to Bid.

(C) Public record - After the Authority issues a notice of intent to award, or in the absence of a notice of intent to award upon final contract execution, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the Bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with Section 1.9.

(D) Low tie bids - If there are two (2) or more low responsive bids from responsible Bidders that are identical in price and other evaluation criteria and that meet all the requirements and criteria set forth in the Invitation to Bid, award may be made by random selection in a manner prescribed by the CPO.

3.3 COMPETITIVE SEALED PROPOSALS

(A) Competitive sealed proposals shall be solicited through a Request for Proposals. The Request for Proposals shall include a scope of work and any applicable evaluation criteria, and shall be subject to the provisions of controlling law and/or regulation. Contractual terms and conditions may be included within the solicitation document or incorporated by reference.

(B) A prequalification process may be conducted prior to the issuance of a Request for Proposals in order to establish a list of qualified Offerors. In the event a prequalification process is used, the Department of Procurement shall only consider proposals that are submitted from prequalified Offerors.

3.3.1 Public Notice - Notice of Request for Proposal shall be electronically posted and the Request for Proposal shall be available for public inspection not less than fourteen (14) days prior to the due date set forth in the Request for Proposal. A shorter time may be deemed necessary for a particular procurement as determined in writing by the CPO. The public notice shall state the place, date, and time for receipt of proposals.

3.3.2 Late Proposals - A proposal is late if it is received at the location designated in the

Request for Proposals after the time and date set for receipt of proposals. Late proposals shall be rejected in accordance with Section 3.2.3.4.

3.3.3 Receipt of Proposals - Proposals shall not be opened publicly. No proposals shall be handled as to permit disclosure of the contents of any proposal to competing Offerors. Proposals shall be open for public inspection after a notice of intent to award is issued, or in the absence of a notice of intent to award, after final execution of the contract, except to the extent that the withholding of information is permitted or required by law. If the Offeror designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions in accordance with Section 1.9.

3.3.4 Withdrawal of Proposals - Proposals may be withdrawn by written notice before or after proposal opening. All decisions to permit the withdrawal of a proposal after opening shall be supported by a written determination made by the CPO.

3.3.5 Evaluation of Proposals

(A) Evaluation criteria - The Request for Proposals shall state the criteria to be used in the evaluation of the proposals and shall include their relative importance. Specific numerical weighting is not required to be published. Evaluation criteria are subject to the provisions of controlling law and/or regulation. Evaluation criteria may include but not be limited to experience, qualifications, previous performance assessment from the Authority, past experience with the selection committee members, method of approach, interviews, demonstrations, references and price.

(B) Selection committee - The CPO shall appoint a selection committee to evaluate the proposals and make a recommendation based on the criteria set forth in the Request for Proposals. No members of the Board or the President shall be voting members of a Selection Committee. No other factors or criteria may be used in the evaluation process by the Selection Committee.

3.3.6 Discussion with Offerors - Discussions may be conducted with Offerors.

3.3.7 Negotiations with Offerors and Revisions to Proposals - Negotiations may be conducted with Offerors. Offerors shall be accorded fair and equal treatment in conducting negotiations and there shall be no disclosure of any information derived from proposals submitted by competing Offerors.

(A) Concurrent negotiations - Negotiations may be conducted concurrently with Offerors for the purpose of determining source selection and/or contract award.

(B) Exclusive negotiations - Exclusive negotiations may be conducted with the Offeror whose proposal is determined in the source selection process to be most advantageous to the Authority. Exclusive negotiations may be conducted subsequent to concurrent negotiations or may be conducted without requiring previous concurrent negotiations. Exclusive negotiations shall not constitute a

contract award nor shall it confer any property rights to the successful Offeror. If exclusive negotiations are conducted and an agreement is not reached, the Authority may enter into exclusive negotiations with the next highest ranked Offeror without the need to repeat the formal solicitation process.

3.3.8 Contract Award - Contract award shall be made by the CPO to the responsible Offeror whose proposal is determined in writing to be the most advantageous to the Authority taking into consideration the evaluation criteria set forth in the Request for Proposals. The contract file shall contain the basis on which the award is made.

3.4 REQUEST FOR QUALIFICATION

3.4.1 Request for Qualification of Prospective Providers of Architect/Engineer Services - The Authority may require that prospective providers of Architect/Engineer Services qualify to respond to a Solicitation for either a specific project or an identified group of projects. The procedure for qualification is as follows:

(A) The Authority shall issue a Request for Qualification questionnaire that each prospective provider of Professional Services must complete and return in the manner and within the timeframe indicated;

(B) For any project-specific information required, the Authority shall set objective scoring criteria and incorporate the criteria into any scoring procedure;

(C) The Authority shall advertise the Request for Qualification questionnaire in the same manner required for an RFP;

(D) A successful Request for Qualification shall be valid for not more than five (5) years following the date of such qualification, or as determined by the CPO in writing;

(E) A prospective provider of Architect/Engineer Services who is notified that it has not been qualified may request within 10 calendars days an explanation of the reasons for rejection of qualification.

(F) Failure to obtain qualification shall not, in itself, preclude a person or entity from participating in other Solicitations or submitting on future Request for Qualifications.

3.4.2 Compliance Procedures - Architectural/Engineering Services for FAA Airport grant projects shall follow the guidance and procedures contained in FAA A/C 150/5100-14D (or subsequent versions), "Architectural Engineering and Planning Consultant Services for Airport Grant Projects."

3.4.3 Contracts for Professional Services - Contracts for medical services, technology services, accounting services, fiscal agent services, financial advisory services, educational consulting services, architectural and engineering services, and any similar services, by professional persons or groups of high ethical standards, shall not be based

on competitive sealed bids, but shall be awarded on the basis of recognized competence and integrity.

3.5 REVERSE AUCTIONS

3.5.1 Competitive Reverse Auction Bids – A competitive Reverse Auction Bid shall be solicited through an Invitation for Reverse Auction Bid. The Invitation for Reverse Auction Bid shall be issued and shall include specifications and any applicable criteria. Contractual terms and conditions may be included with the solicitation document or incorporated by reference.

3.5.2 Pre-Qualification Process – A pre-qualification process may be conducted prior to the issuance of the Invitation for Reverse Auction Bid in order to establish a list of qualified Bidders. In the event a pre-qualification process is used, the Department of Procurement shall only consider bids that are submitted from pre-qualified Bidders.

3.5.3 Public Notice - Notice of the Invitation for Reverse Auction Bids shall be electronically posted shall be available for public inspection not less than fourteen (14) days prior to the date set forth therein for the close of the auction. A shorter time may be deemed necessary for a particular procurement as determined in writing by the CPO. The public notice shall state the location of the internet website hosting the reverse auction.

3.5.4 Bid Acceptance and Bid Evaluation - Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Policy. Bids shall be evaluated based on the requirements set forth in the Invitation for Reverse Auction bids, which may include criteria, to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The Invitation for Reverse Auction bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the Invitation for Reverse Auction bids.

3.5.5 Correction or Withdrawal of Bids; Cancellation of Awards - Correction or withdrawal of inadvertently erroneous bids before or after auction closing, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before auction closing may be modified or withdrawn by written notice received in the department prior to the time set for auction closing.

Mistakes discovered after auction closing may be modified or withdrawn only to the extent that the Bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After auction closing, no changes in bid prices or other bid provisions prejudicial to the interest of the Authority or fair competition shall be permitted. In lieu of bid correction, a Bidder alleging a mistake may be permitted to withdraw its bid if:

(A) The mistake is clearly evident in the auction transcripts, but the intended correct bid is not similarly evident; or

(B) The Bidder submits evidence that clearly and convincingly demonstrates that a mistake was made.

All decisions to permit the correction or withdrawal of bids, or to cancel awards based on bid mistakes, shall be supported by a written determination made by the CPO.

3.5.6 Contract Award. The contract shall be awarded by appropriate notice to the lowest responsible and responsive Bidder whose bid conforms in all material respects to requirements and criteria set forth in the Invitation for Reverse Auction bids.

3.6 CANCELLATION OF SOLICITATION

3.6.1 Cancellation of Solicitations - An Invitation to Bid, a Request for Proposals, a Request for Qualifications, or other solicitation may be cancelled prior to opening or after opening when it is in the best interest of the Authority. As used in this Policy, "opening" means the date and time set for opening of bids, receipt of statements of qualifications or receipt of proposals.

3.6.2 Cancellation of Solicitations Prior to Opening - Prior to opening, a solicitation may be cancelled in whole or in part when the CPO determines in writing that such action is in the Authority's best interest for reasons including but not limited to:

(A) The Authority no longer requires the Goods, Services, or Construction;
(B) The Authority no longer can reasonably expect to fund the procurement;
(C) Proposed amendments to the solicitation would be of such magnitude that a new solicitation is in the best interest of the Authority; or
(D) It is otherwise not advantageous to the Authority.

When a solicitation is cancelled prior to opening, notice of cancellation shall be publicly posted. The notice of cancellation shall identify the solicitation, briefly explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar Goods, Services, or Construction.

3.6.3 Cancellation of Solicitation After Opening but Prior to Award- After opening, but prior to award, a solicitation may be cancelled when the CPO determines in writing that such action is in the Authority's best interest for reasons including but not limited to:

(A) The Authority no longer requires the Goods, Services or Construction;
(B) Ambiguous, erroneous or otherwise inadequate specifications or scopes of work were part of the solicitation;
(C) The solicitation did not provide for consideration of all factors of significance to the Authority;
(D) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
(E) All otherwise acceptable bids, statements of qualifications or proposals received

are at clearly unreasonable prices;

(F) There is reason to believe that the bids, statements of qualifications or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith;

(G) Competition was insufficient; or

(H) It is otherwise not advantageous to the Authority.

A notice of cancellation of the solicitation shall be sent to all persons that submitted bids, statements of qualifications or proposals, and it shall conform to the requirements of this Policy. All bids, proposals or statements received shall remain, to the extent possible, confidential.

3.6.4 Documentation of Cancellation - The reasons for cancellation shall be made a part of the procurement file and shall be available for public inspection.

3.7 REJECTION OF INDIVIDUAL BIDS, PROPOSALS, QUOTATIONS OR STATEMENTS OF QUALIFICATIONS

3.7.1 A Bid or quotation may be rejected if:

(A) The Bidder is determined to be non-responsible pursuant to Section 3.8; or

(B) The bid or quotation is non-responsive in accordance with Section 3.2.2 or 3.2.3; or

(C) The proposed price exceeds available funds or is unreasonable; or

(D) It is otherwise not advantageous to the Authority.

3.7.2 A proposal or statement of qualifications may be rejected if:

(A) The person responding to the solicitation is determined to be non-responsible pursuant to Section 3.8; or

(B) The proposal or statement of qualifications is non-responsive in accordance with Section 3.3 or 3.4; or

(C) It is unacceptable; or

(D) The proposed price exceeds available funds or is unreasonable; or

(E) It is otherwise not advantageous to the Authority.

3.7.3 Documentation of Rejection - The reasons for rejection shall be made a part of the procurement file and shall be available for public inspection.

3.8 RESPONSIBILITY OF BIDDERS, OFFERORS AND RESPONDENTS

3.8.1 Findings of Non-Responsibility - If a Bidder, Offeror or Respondent who otherwise would have been awarded a contract is found non-responsible, a written finding of non-responsibility, setting forth the basis of the finding, shall be prepared by the CPO. The unreasonable failure of a Bidder, Offeror or Respondent to promptly supply

information in connection with an inquiry with respect to responsibility may be grounds for a finding of non-responsibility with respect to such Bidder or Offeror. The written finding shall be made part of the contract file and be made a public record.

3.8.2 Confidential Information - Confidential information furnished by a Bidder, Offeror or Respondent in response to an inquiry of responsibility pursuant to this Policy shall not be disclosed by the Authority outside of the department (or other MNAA entity, if applicable) or individuals involved in the evaluation process without prior written consent by the Bidder, Offeror or Respondent. Confidential information shall be identified and managed in accordance with Section 1.9.

3.8.3 Determining Responsibility - Factors to be considered in determining if a prospective contractor is responsible include:

(A) The proposed contractor's financial, physical, personnel or other resources, including subcontracts;
(B) The proposed contractor's record of performance and integrity;
(C) Whether the proposed contractor is qualified legally to contract with the Authority; and
(D) Whether the proposed contractor supplied all necessary information concerning its responsibility.

3.8.4 Responsibility Criteria - Procurement may establish specific responsibility criteria for a particular procurement. Any specific responsibility criteria shall be set forth in the solicitation

3.9 EXCEPTIONS TO FULL AND OPEN COMPETITION

3.9.1 In accordance with and subject to existing Bylaws, controlling law and/or regulation, the CPO may waive the requirement for competitive solicitation under any of the circumstances identified in this Policy. Exceptions to the full and open competition requirements do not excuse these procurements from following the Authority's specified approvals and obtaining documentation appropriate to the particular circumstances. A purchase or contract under any of the following exceptions should still include the standard applicable Authority terms and conditions as well as any terms and conditions required by Tennessee law.

3.9.2 Emergency Procurements - Notwithstanding any other provisions of this Policy, the CPO may make or authorize others to make emergency procurements of Goods, Services, or Construction when there exists a threat to public health, welfare, safety or property or if a situation exists where substantial economic loss and/or interruption of services exists, or which makes compliance with Sections 3.2. (competitive sealed bidding) or Section 3.3 (competitive sealed proposals) contrary to the public interest; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. The department (or other MNAA entity, if

applicable) requesting an emergency procurement shall provide written evidence to support an emergency determination. An emergency procurement shall be limited to those Goods, Services, or Construction necessary to satisfy the emergency need. A written determination by the CPO of the basis for the emergency procurement and for the selection of the particular contractor shall be maintained as a public record.

3.9.3 Sole Source Procurements - Notwithstanding any other provisions of this Policy, a contract may be awarded without competition when the CPO determines in writing, after conducting a good faith review of available sources, that there is only one source for the required Goods, Services, or Construction. The department (or other MNAA entity, if applicable) requesting a Sole Source procurement shall provide written evidence to support a Sole Source determination. The CPO may require that negotiations are conducted as to price, delivery, and terms. The CPO may require the submission of cost or pricing data in connection with an award under this section. Sole Source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination by the CPO of the basis for the Sole Source procurement shall be maintained as a public record.

3.9.4 Single Source Procurement – Notwithstanding any other provisions of this Policy, the CPO may make or authorize others to make procurement, when it is in the best demonstrated interest of the Authority, to use a single supplier. A Single Source may be utilized when, because of standardization, warranty, or due to unusual or special circumstance, it would be in the best interest of the Authority to accomplish the procurement without compliance with Section 3.2 (competitive sealed bidding) or Section 3.3 (competitive sealed proposals). Single Source procurement shall not be used unless there is clear and convincing evidence that it is the only procurement method to fulfill the Authority's requirements. The department (or other MNAA entity, if applicable) requesting a Single Source shall provide written evidence to support the Single Source. A written determination by the CPO approving the Single Source, as well as the basis for the selection of the particular contractor, shall be maintained as public record. The determination and the award shall be made in accordance with procurement procedures, ensuring that the procurement is fair, honest, prudent and a wise exercise of discretion and is in the public interest.

SECTION 4.0: SPECIFICATIONS

4.0.1 Maximum Practicable Competition - All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the Authority's needs and shall not be unduly restrictive.

(A) To the extent practicable and unless otherwise permitted by this Policy, all specifications shall describe the Authority's requirements in a manner that does not unnecessarily exclude a Good, Service, or Construction item.

(B) Restrictive specifications shall not be used unless such specifications are required and it is not practicable or advantageous to use a less restrictive specification. The department requesting a restrictive specification shall provide written evidence to support the restrictive specification. Past success in the material's performance, or inconvenience of developing specifications do not justify the use of restrictive specifications.

(C) To the extent practicable, the Authority shall use accepted commercial specifications and shall procure standard commercial materials.

4.0.2 Specifications Prepared by Other than Authority Personnel - The requirements of this Policy regarding the purposes and non-restrictiveness of specifications shall apply to all specifications prepared other than by Authority personnel, including, but not limited to, those prepared by architects, engineers, designers, and consultants for public contracts, or subcontractors. No person preparing specifications shall receive any direct or indirect benefit from the utilization of such specifications.

4.0.3 Brand Name or Equal Specification - A brand name or equal specification may be used to describe the standards of quality, performance, and other salient characteristics needed to meet the requirements of a solicitation, and which invites offers for equivalent products from a manufacturer.

4.0.4 Brand Name Specification - A brand name specification may be used to identify the sole acceptable item that meets the Authority's needs for purchases above the amount specified in Section 3.1. The department requesting a brand name specification shall provide written evidence to support a brand name determination. A written determination by the CPO of the basis for the brand name shall be maintained as public record. Past success in the material's performance, traditional purchasing practices, or inconvenience of drawing specifications do not justify the use of a brand name specification.

SECTION 5.0: CONTRACT TERMS

5.0.1 All Authority contracts shall include provisions, terms and conditions necessary to define the responsibilities and rights of the parties to the solicitation and contract. The CPO shall have the authority to establish and modify any such terms and conditions, provided such provisions, terms and conditions comply with the requirements of this Policy and applicable rules, laws and regulations.

SECTION 6.0: CONTRACT EXECUTION

6.0.1 Approval - All contracts entered into under this Policy shall be executed in the name of the CPO, the President or the Board of Commissioners, and approved as to form and legality by the Authority Legal Counsel, sufficiency of funds by the Treasurer, where

applicable, dependent upon the dollar threshold established in the Bylaws and/or this Policy.

6.0.2 Multi-Term Contracts - Unless otherwise provided by law, a contract for Goods, Services, or Construction may be entered into for any period of time deemed to be in the best interest of this Authority, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first contract period at the time of contracting. Payment and performance obligations for succeeding contracting periods are subject to the availability and appropriation of monies.

6.0.3 Bid and Contract Security, Supply or Service Contracts - The CPO may require the submission of security to guarantee faithful bid and contract performance. In determining the amount and type of security required for each contract, the CPO shall consider the nature of the performance and the need for future protection to the Authority. The requirement for security must be included in the Invitation to Bid or Request for Proposals. Failure to submit security in the amount and type of security required may result in the rejection of the bid or proposal.

SECTION 7.0: CONTRACT ADMINISTRATION

7.0.1 Contract Amendments – Any changes to an existing contract for Goods, Services, or Construction shall be amended by the CPO. Proposed contract amendments exceeding the delegated authority level of the CPO shall further be reviewed and approved by the President or by the Board for changes exceeding the President's authority. Legal Counsel shall review and approve proposed contract amendments for form and legality and the Treasurer shall approve for sufficiency of funds, where applicable.

7.0.2 Right to Inspect - The Authority may, at reasonable times, inspect the part of the plant or place of business of a contractor, consultant or any subcontractor or subconsultant that is related to the performance of any contract awarded or to be awarded by this Authority.

7.0.3 Right to Audit Records - The Authority may, at reasonable times and places, audit the books and records of any person who submits cost or pricing data to the extent that the books and records relate to the cost or pricing data. Any person who is awarded a contract, change order or contract modification for which cost or pricing data is required shall maintain the books and records that relate to the cost or pricing data for three (3) years from the date of final payment under the contract, unless otherwise specified in the contract.

7.0.4 Assignment of Rights and Duties - The rights and duties of an Authority contract are not transferable or otherwise assignable without the written consent of the CPO or for purchases exceeding the delegated authority level, the President.

7.0.5 Contractor Performance Assessment – The CPO shall establish a methodology and procedure for assessing the performance of Contractors, to include a mechanism by which Contractors are afforded an opportunity to provide input and resolution to performance concerns. The results of the performance assessment shall be permissible for use in evaluating future solicitations from a Contractor who has previous experience with the Authority.

SECTION 8.0: COOPERATIVE PROCUREMENT AND PURCHASES THROUGH STATE AND OTHER GOVERNMENTS

8.0.1 Definition - "Cooperative purchasing" means procurement conducted by, or on behalf of, two or more public procurement units.

8.0.2 Applicability - Agreements entered into pursuant to this Policy shall be limited to the areas of procurement of Goods, Services, or Construction, warehousing or materials management.

8.0.3 Cooperative Purchasing Agreements Required - The Authority is not authorized to participate in cooperative purchasing unless a cooperative purchasing agreement is executed between the parties or the parties are members of a cooperative purchasing group or authority that permits cooperative use amongst its membership. All agreements entered into pursuant to this Policy shall be approved by the CPO.

8.0.4 Purpose - The Authority is authorized to procure, participate in, sponsor, conduct or administer a Cooperative Purchasing Agreement for the procurement of any Goods, Services, or Construction with one or more eligible procurement units in accordance with an agreement entered into between the participants. An agreement entered into as provided in this section is exempt from Section 3 with the exception that any Cooperative Purchase Agreement utilized by the Authority must have been solicited and awarded through an open and competitive sourcing process, in compliance with the requirements of this Policy. A Cooperative Purchase Agreement may include an option for other government entities that did not participate in the original Cooperative Purchase Agreement procurement to participate in the Cooperative Purchase Agreement.

Parties under a Cooperative Purchasing Agreement may:

(A) Sponsor, conduct or administer a cooperative agreement for the procurement or disposal of any Goods, Services, or Construction;

(B) Cooperatively use Goods or Services:

(C) Commonly use or share warehousing facilities, capital equipment and other facilities;

(D) Provide personnel, except that the requesting eligible procurement unit may pay the public procurement unit providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement;

(E) On request, make available to other eligible public procurement units informational, technical or other services that may assist in improving the efficiency or economy of procurement. The public procurement unit furnishing the informational or technical services has the right to request reimbursement for the reasonable and necessary costs of providing such services. The activities described in paragraphs (A) through (E) do not limit the activities of parties under a cooperative purchasing agreement.

SECTION 9.0: MINORITY WOMAN-OWNED SMALL BUSINESS PARTICIPATION

9.0.1 All procurements must comply with the requirements of the Authority's Small Minority Woman-Owned Business Enterprise Program, the Airport Concession Disadvantaged Business Enterprise Program, or the Disadvantaged Business Enterprise Program as determined by the Business Diversity and Development Office ("BDD"). The BDD shall maintain policy and procedure on the applicability of Small and Disadvantaged Business requirements as they pertain to all applicable procurements.

SECTION 10.0: PCARD

10.0.1 The Department of Procurement shall be responsible for establishing policy and procedure for the effective management of the Authority's pCard program and it's applicability to procurements.

SECTION 11.0: MATERIALS MANAGEMENT, SURPLUS AND AUCTION

11.0.1 Definitions - In this Policy, unless the context otherwise requires:
(A) *"Property"* means assets with a useful life of more than one (1) year.
(B) *"Surplus property"* means property no longer needed by departments (or other MNAA entities, if applicable) for their operations, property in poor or non-working condition, or property that is a by-product (e.g. scrap metal, used tires and oil).

11.0.2 Materials Management Guidelines - The CPO shall establish guidelines for and shall be responsible for the management of all surplus materials. The CPO will establish policies and procedures governing the sale or other disposal of surplus items no longer needed, and any policies or procedures required for efficient and effective operation of the auction and surplus system.

11.0.3 Inventory Management - The CPO shall control and supervise all existing and future Authority warehouses established for the purpose of purchasing, storing and issuing supplies. The CPO shall also be responsible and accountable for all warehouse materials and maintain a perpetual inventory record thereof. The CPO will establish policies and procedures governing the addition or deletion of items carried in inventory, the sale or other disposal of inventory items no longer needed, delivery and other services provided to using agencies, and any policies or procedures required for efficient and effective operation of the inventory system.

11.0.4 Declaration that Property Is Surplus - Each article of Property to be disposed of as Surplus Property must be declared to be surplus by the Department Head of the Authority department that will make such disposition; provided, however, that, (i) before any Property can be declared to be Surplus, the same must first be offered to other Authority departments and no other department indicates an interest in such Property so offered, and (ii) no such declaration shall be effective without the department head's approval and determination that such Property is not usable by any other Authority department. Signatory Approval for disposition of surplus property will be the same dollar limits as approval for Authority Contracting.

11.0.5 Fair Market Value Required - Except where otherwise provided, no Property may be disposed of as Surplus Property unless the Authority receives Fair Market Value therefor.

11.0.6 Methods of Disposition - Any disposition of Surplus Property must occur through one of the following methods:

(A) Trade-in (if permitted by the nature of the property or equipment) under the terms and conditions of the Contract under which the Authority replaces such Surplus Property;

(B) Sale to the State of Tennessee, eligible political subdivisions of the State of Tennessee or other governmental entities;

(C) Public auction for which Public Notice is given;

(D) Sale under sealed bids for which Public Notice is given;

(E) Like-kind exchange of property;

(F) Negotiated contract for sale, at arm's length, but only in those instances in which the character of the Surplus Property is such that no other means of disposition is practicable.

11.0.7 Criteria for Determining Method of Disposition - The selection of the method of disposition for Surplus Property shall be based on the following criteria:

(A) The character, utility, and functionality of the Surplus Property;

(B) The economics of disposition, in light of all relevant circumstances, including, without limitation, the condition and climate of the potential market and estimated market value of the Surplus Property, transportation costs, and other cost considerations associated with the disposition; and

(C) Sound fiscal and budgetary policy and practices.

11.0.8 Special Rules with Respect to Firearms and Explosives - The disposition of firearms, ammunition, and other explosives shall be completed in accordance with controlling law and/or regulation governing the disposition of such property.

11.0.9 Special Rules with Respect to Donated Property - Nothing contained herein shall prevent the Authority from making a donation of Surplus Property to other governmental or non-profit entities. The Authority shall reserve disposition by donation for situations involving a compelling public purpose.

11.0.10 Awards - If the Authority conducts a Solicitation for the disposition of Surplus Property, the Authority will award such Surplus Property to the highest Responsive Bid that is received.

11.0.11 Advertisement and Public Notice - All dispositions of Surplus Property, except a negotiated contract for sale or donation, require Public Notice.

11.0.12 Use of Electronic Media - The use of electronic media, including, without limitation, websites, and acceptance of electronic signatures is an appropriate means for disposing of Surplus Property so long as such electronic media provides for (i) appropriate

security to prevent unauthorized access to the bidding, approval, and award processes, and (ii) accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

11.0.13 Special Rules for Authority Employees - In the event an Authority employee is involved with the disposition of or has personal or first-hand knowledge regarding the condition of surplus property, the employee is prohibited from bidding on such surplus property. In addition, in the event an employee's supervisor, immediate family member, or person living in the employee's household or the employee's supervisor's household are involved with the disposition of or has personal or first-hand knowledge regarding the condition of surplus property, such employee is prohibited from bidding on such surplus property.

11.0.14 Protests of Disposition - Any person aggrieved in connection with the disposition of Surplus Property by the Authority and seeking administrative review of such disposition shall follow the procedure contained herein for a Protest.

SECTION 12.0: DONATIONS

12.0.1 Notwithstanding any other provision, surplus, unclaimed, or lost property not needed by using agencies may be disposed of through a donation process provided that any such noncompetitive disposition is made pursuant to a request submitted to the CPO for review and approval. The CPO shall consider the monetary loss to the Authority and determine whether such disposition is in the public interest. Any request for donation with a fair market value exceeding ten thousand dollars ($10,000.00) shall require additional approval by the President. The CPO shall report all donations to the Treasurer.

SECTION 13.0: LEGAL AND CONTRACTUAL REMEDIES

13.0.1 Definitions - In this Policy, unless the context otherwise requires:

(A) *"Adequate evidence"* means more than mere accusation but less than substantial evidence. Consideration shall be given to the amount of credible information available, reasonableness in view of surrounding circumstances, corroboration, and other inferences that may be drawn from the existence or absence of affirmative facts.

(B) *"Affiliate"* means any person whose governing instruments requires it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. It may also include persons doing business under a variety of names, or where there is a parent-subsidiary relationship between persons.

(C) *"Debarment"* means an action taken by the CPO under this Policy to prohibit a

person from participating in Authority procurements.

(D) *"Filed"* means delivery to the CPO. A time and date of receipt shall be documented in a verifiable manner for purposes of filing.

(E) *"Governing instruments"* means those legal documents that establish the existence of an organization and define its powers including articles of incorporation or association, constitution, charter and by-laws.

(F) *"Interested party"* means an actual or prospective Bidder, Respondent or Offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract or by the failure to award a contract. Whether an economic interest exists will depend upon the circumstances of each case. An interested party does not include a supplier, subconsultant or subcontractor to an actual or prospective Bidder, Respondent or Offeror.

(G) *"Receipt"* means the earlier of actual receipt or the first attempted delivery by certified mail, or by any other means that provides evidence of the attempt, to the persons' last known address.

(H) *"Substantial evidence"* means such relevant evidence as a reasonable person might accept as sufficient to support a particular conclusion.

(I) *"Suspension"* means an action taken by the CPO under this Policy temporarily disqualifying a person from participating in Authority procurements.

13.0.2 Authority of the CPO - The CPO shall have the authority to settle and resolve protests and contract claims. Appeals from the decisions of the CPO may be made to the Procurement Appeals Committee (PAC) pursuant to the provisions of this Policy.

13.0.3 Right To Protest - Only a Bidder or a Respondent may protest a decision by the Authority in connection with an Award. Any challenge to a decision by the Authority in connection with an Award must be initiated by a Protest in accordance with this Policy. Failure to file a timely protest in accordance with this Policy constitutes a failure to exhaust administrative remedies and shall cause a forfeiture of the right to protest any such decision by the Authority.

13.0.4 Filing Requirements - A Protest must be in writing and received by the Authority within the timelines prescribed in Section 13.0.5. A Protest must be actually delivered to the address of Authority offices during the Authority's regular business hours in order to be deemed to be received by the Authority as required under this Policy. A Protest must be submitted in hard copy and addressed as follows: The Metropolitan Nashville Airport Authority, Attention: CPO, One Terminal Drive, Suite 501, Nashville, Tennessee 37214-4114. A Protest sent by telegraphic or facsimile transmission or by e-mail or other electronic means will not meet the filing requirement set forth herein and will not be deemed to be received by the Authority.

13.0.5 Timeline for Filing Protests – Timelines for filing Protests shall be as follows:

(A) Protests based upon alleged improprieties in a solicitation that are apparent before

the solicitation due date shall be filed not less than five (5) working days before the solicitation due date.

(B) In cases other than those covered in subsection (A) above, protests shall be filed within ten (10) days after the aggrieved person knows or should have known of the facts giving rise thereto; however, in no event shall the protest be filed later than ten (10) days after issuance of notice of intent to award or in the absence of a notice of intent to award, after notification of award.

(C) The CPO, without waiving the Authority's right to dismiss the protest for lack of timeliness, may consider any protest that is not filed timely.

13.0.6 Content of Protest - The protest shall include the following information:

(A) The name, address, telephone number and email address of the protestant;

(B) The signature of the protestant or its representative;

(C) Identification of the solicitation or contract number;

(D) A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and

(E) The form of relief requested.

13.0.7 Notice To Interested Parties - The CPO shall give notice of the protest to the successful contractor if award has been made or, if no award has been made, to all interested parties. Interested parties have the right to intervene.

13.0.8 Confidential Information - Material submitted by a protestant shall not be withheld from any interested party except to the extent that the withholding of information is permitted or required by law or as determined pursuant to Section 1.10. If the protestant believes the protest contains material that should be withheld, a statement advising the CPO of this fact shall accompany the protest submission in accordance with Section 1.10.

13.0.9 Stay of Procurement During the Legal Due Process - In the event of a timely protest under Section 13.0.5:

(A) The CPO shall stay the solicitation or award of the contract unless he or she makes a written determination to lift the stay based upon a reasonable probability that the protest will be denied and that proceeding further with the solicitation or award of the contract is in the best interests of the Authority. The stay shall automatically continue throughout the legal process until the CPO makes a written determination to lift it.

(B) The Authority may condition its stay of an Award upon the Protesting Party's providing the Authority with a letter of credit, cash deposit, or surety bond in the amount of ten percent (10%) of the value of the lowest Responsive Bid or Response received in the Solicitation at issue or such other amount as established by the Authority as the Authority determines is necessary to protect it from harm as a result of the delay in making the Award and consummating the applicable

Contract.

(C) In the event of a timely appeal under Section 13.0.12, and if a previous stay had been lifted through written determination, the CPO makes another written determination that proceeding with the solicitation or award of the contract is in the best interests of the Authority. The stay shall automatically continue throughout the legal process unless the CPO makes a written determination to lift it.

13.0.10 Decision by the CPO on a Protest - The CPO shall issue a written decision within fourteen (14) days after a protest has been filed. The decision shall contain an explanation of the basis of the decision.

(A) The CPO shall furnish a copy of the decision to the protestant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

(B) The time limit for decisions set forth in this Policy may be extended by the CPO for a reasonable time not to exceed thirty (30) days. The CPO shall notify the protestant in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.

(C) If the CPO fails to issue a decision within the time limits set forth in this Policy, the protestant may proceed as if the CPO had issued an adverse decision.

(D) The CPO's decision shall contain a statement regarding the appeals process that is available pursuant to this Policy.

13.0.11 Remedies for a Protest - If the CPO sustains the protest in whole or part and determines that a solicitation, evaluation process, proposed contract award, or contract award does not comply with this Policy, the CPO shall implement an appropriate remedy. In determining an appropriate remedy, the CPO shall consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to:

(A) The seriousness of the procurement deficiency;

(B) The degree of prejudice to other interested parties or to the integrity of the procurement process;

(C) The good faith of the parties;

(D) The extent of performance;

(E) Costs to the Authority;

(F) The urgency of the procurement; and

(G) The impact of the relief on the using department's mission.

An appropriate remedy may include one or more of the following:

(A) Reject all bids, responses or proposals;

(B) Terminate the contract;

(C) Reissue the solicitation;

(D) Issue a new solicitation;

(E) Award a contract consistent with this Policy;

(F) Such other relief as is determined necessary to ensure compliance with this

Policy.

13.0.12 Appeals To The Procurement Appeals Committee (PAC)

(A) An appeal from a decision entered or deemed to be entered by the CPO shall be filed with the PAC by delivering the appeal to the Authority's Chief Legal Officer within seven (7) days from the date the decision is issued. The appellant shall also file a copy of the appeal with the CPO.

(B) The appeal shall contain:

i) The information set forth in Section 13.0.6, including the identification of confidential information in the manner set forth in Section 1.10;

ii) A copy of the decision of the CPO; and

iii) The precise factual or legal error in the decision of the CPO from which an appeal is taken.

13.0.13 Notice of Appeal - The PAC shall give notice of the appeal to the successful contractor if award has been made or, if no award has been made, to interested parties. Such interested parties shall have the right to request copies of the appeal and to intervene in the proceedings. The PAC shall, upon request, furnish copies of the appeal to the Interested Parties.

13.0.14 CPO Report on the Appeal – The CPO shall submit a report on the appeal to the PAC within seven (7) days from the date the appeal is filed. At the same time, the PAC shall furnish a copy of the report to the appellant by certified mail, return receipt requested or any other method that provides evidence of receipt, and to any interested parties who have responded to the notice. The report shall contain copies of:

(A) The appeal;

(B) Any other documents that are relevant to the protest; and

(C) A statement by the CPO setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.

13.0.15 Extension for Filing of Report

(A) The CPO may request in writing to the PAC an extension of the time period setting forth the reason for extension.

(B) The PAC's determination on the request shall be in writing, state the reasons for the determination and, if an extension is granted, set forth a new date for the submission of the report. The PAC shall notify the appellant in writing that the time for the submission of the report has been extended and the date by which the report will be submitted.

13.0.16 Comments on Report

(A) The appellant shall file comments on the CPO's report with the PAC within seven (7) days after receipt of the report. Copies of the comments shall be provided by

the appellant to the CPO and all other interested parties. The comments must contain a statement or confirmation as to the appellant's requested form of relief.

(B) The PAC may grant an extension on the time period to file comments pursuant to a written request made by the appellant stating the reason an extension is necessary. The PAC's determination on the request shall be in writing, state the reasons for the determination and, if the extension is granted, set forth a new date for the filing of comments. The PAC shall notify the CPO of any extension.

13.0.17 Dismissal Before Hearing - The PAC shall dismiss, upon a written determination, an appeal before scheduling a hearing if:

(A) The appeal does not state a valid basis, including a detailed statement of the legal and factual grounds, for protest; or

(B) The appeal is untimely pursuant to Section 13.0.12.

SECTION 14.0: HEARING BEFORE PROCUREMENT APPEALS COMMITTEE (PAC)

14.0.1 Nothwithstanding Section 13.0.17, and in the event a Protest cannot be informally resolved, the Protest shall proceed to a formal hearing before the PAC. The hearing before the PAC shall afford an opportunity for the Protesting Party to present evidence as to why the Authority's decision was arbitrary or capricious or in violation of applicable law. The Protesting Party has the burden of proof and persuasion to show by clear and convincing evidence that the Authority's decision was arbitrary or capricious or in violation of applicable law. The Protesting Party has the right to be represented at the hearing before the PAC by legal counsel of its choosing.

14.0.2 Decision By PAC - Within ten (10) days after the close of the hearing, the PAC shall issue a written decision with respect to the Protest. The decision shall be sent to the Protesting Party and all other Bidders or Respondents participating in the related Solicitation. The decision shall state with particularity the reason for the action taken and shall include written findings of fact and conclusions of law in support of the PAC's decision. The PAC's decision shall constitute a final administrative decision.

SECTION 15.0: AUTHORITY TO DEBAR OR SUSPEND

15.0.1 The CPO, after consultation with the department and Legal Counsel, has the authority to debar or suspend a person from participating in Authority procurements.

15.0.2 Debarment or Suspension Causes - The causes for debarment or suspension shall be limited to the following:

(A) Conviction of any person or any affiliate of any person for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or

subcontract.

(B) Conviction of any person or any affiliate of any person under any statute of the federal government, this state or any other state for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, or receiving stolen property; or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Authority contractor and which conviction arises out of or obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

(C) Conviction or civil judgment finding a violation by any person or affiliate of any person under state or federal antitrust statutes arising out of the response to a solicitation.

(D) Violations of contract provisions within three (3) years of current debarment action, as set forth below, of a character which are reasonably deemed to be so serious as to justify debarment action:

(i) Abandonment of a contract without good cause; or

(ii) Knowingly fails without good cause to perform in accordance with the specifications or within the time limit provided in the contract;

(iii) Failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment; or

(E) Failure to pay a contractor, subcontractor or material provider; or

(F) Any other cause that the CPO reasonably determines to be so serious and compelling as to affect responsibility as an Authority contractor, including suspension or debarment of such person or any affiliate of such person by another governmental entity for any cause listed in this section.

15.0.3 Matters Not Proper for Debarment or Suspension - Any conviction or judgment dated more than three (3) years prior to the notice of suspension or notice of debarment shall not be a basis for any debarment or suspension of a person or an affiliate of a person.

15.0.4 Initiation of Debarment - Upon receipt of information concerning a possible cause for debarment, the CPO may investigate the possible cause. If the CPO has a reasonable basis to believe that a cause for debarment exists, the CPO may debar a person in accordance with this Policy.

15.0.5 Period of Debarment - The period of time for a debarment shall not exceed three (3) years from the date of the debarment determination. If debarment is based solely upon debarment by another governmental agency, the period of debarment may run concurrently with the period established by that other debarring agency.

15.0.6 Notice - If the CPO implements debarment, the CPO shall notify the person in writing within seven (7) days of the debarment action by certified mail, return receipt requested or by any other method that provides evidence of receipt. The person may submit a request to the CPO for an administrative hearing within fourteen (14) days of issuance of the CPO's debarment action. If a hearing is granted, it shall be conducted in accordance with this Policy.

15.0.7 Notice to Affiliates - If the CPO proposes to debar an affiliate, the affiliate shall have a right to appear in any hearing on the proposed debarment to show mitigating circumstances. The affiliate shall advise the CPO in writing within fourteen (14) days of receipt of the notice under Section 15.0.6 of its intention to appear. Failure to provide written notice of appearance within the fourteen-day period shall be a waiver of the right to appear in the hearing.

15.0.8 Imputed Knowledge - Improper conduct by a person may be imputed to an affiliate for purposes of debarment where the impropriety occurred in connection with the affiliate's duties for or on behalf of, or with the knowledge or approval of, the contractor. The improper conduct of a person or its affiliate having a contract with a contractor may be imputed to the contractor for purposes of debarment where the impropriety occurred in connection with the person's duties for or on behalf of, or with the knowledge or approval of, the contractor.

15.0.9 Suspension - The CPO, after consultation with the department and Legal Counsel, may suspend a person from consideration for award of contracts if there is probable cause for debarment in order to protect the Authority's interests.

15.0.10 Period and Scope of Suspension - The period of suspension shall not be more than sixty (60) days unless the CPO is informed of compelling reasons to extend the period of suspension.

15.0.11 Suspension Notice, Hearing, Determination and Appeal - The CPO shall notify the person suspended by certified mail, return receipt requested or by any other method that provides evidence of receipt. The notice of suspension shall state:

(A) The basis for suspension;
(B) The period, including dates, of the suspension;
(C) That bids or proposals shall not be solicited or accepted from the person and, if received, will not be considered; and
(D) That the person may request a hearing on the suspension if the person files a written request for a hearing with the CPO within seven (7) days after receipt of the notice.

If a suspended party requests a hearing, the CPO may arrange for a hearing. In the event a hearing is conducted, it shall occur to the extent practicable, in accordance with this Policy.

15.0.12 Reinstatement - The CPO may at any time after a final decision on debarment or suspension reinstate a debarred or suspended person or rescind the debarment or suspension upon a determination that the cause upon which the debarment or suspension is based no longer exists. Any debarred or suspended person may request reinstatement by submitting a petition to the CPO supported by documentary evidence showing that the cause for debarment or suspension no longer exists or has been substantially mitigated. The CPO may require a hearing on the request for reinstatement. The decision on reinstatement shall be in writing and specify the factors on which it is based.

15.0.13 Limited Participation - The CPO may allow a debarred or suspended person to participate in Authority contracts on a limited basis during the debarment or suspension period upon a written determination that participation is advantageous to the Authority. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

15.0.14 Master List for Suspension and Debarment - The CPO shall maintain a master list of debarments and suspensions under this Policy. The master list shall show as a minimum the following information:

(A) The names of those persons whom the Authority has debarred or suspended under this Policy;
(B) The basis for the action;
(C) The period of debarment or suspension, including the expiration date; and
(D) The name of the debarring or suspending agency, if the Authority's debarment or suspension is based on debarment or suspension by another governmental agency.

The master list shall include a separate section listing persons voluntarily excluded from participation in Authority contracts.

15.0.15 Hearing Procedures - If a hearing is required or permitted under this Policy, the CPO shall remand the matter to the PAC. The PAC shall arrange for a prompt hearing and notify the parties of the time and place of the hearing. The hearing shall be conducted in an informal manner without formal rules of evidence or procedure.

The PAC may:

(A) Hold pre-hearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
(B) Require parties to state their positions concerning the various issues in the proceeding;
(C) Require parties to produce for examination those relevant witnesses and documents under their control;
(D) Rule on motions and other procedural items on matters pending before such officer;

(E) Regulate the course of the hearing and conduct of participants;
(F) Establish time limits for submission of motions or memoranda;
(G) Impose appropriate sanctions against any person failing to obey an order under these procedures, which may include:
(i) Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;
(ii) Excluding all testimony of an unresponsive or evasive witness; and
(iii) Expelling the person from further participation in the hearing;
(H) Make official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice;
(I) Administer oaths or affirmations; and
(J) Assess or apportion damages or costs associated with the hearing matter or the proceedings to the parties involved.

A transcribed record of the hearing shall be made available at cost to the requesting party.

15.0.16 The Decision of the PAC - The decision by the PAC shall be final. The decision shall be based on the evidence presented and shall include findings of fact and conclusions of law. The decision shall be sent to all parties by certified mail, return receipt requested or by any other method that provides evidence of receipt.

15.0.17 Judicial Review of Protests, Claims, Debarments or Suspensions - Debarment, or suspension under this Policy is subject to special action review by any party to the proceeding. Exhaustion of the procedures set forth in this Policy shall be a condition precedent to seeking judicial review and the party seeking review shall file the complaint within thirty (30) days of a final decision by the PAC.

15.0.18 Exclusive Remedy - Notwithstanding any law to the contrary, this Policy shall provide the exclusive procedure for asserting a claim or cause of action against this Authority arising in relation to any procurement conducted under this Policy.

SECTION 16.0: FUNDING SOURCES

16.0.1 The Authority may receive grant funding from other sources, such as the United States Department of Transportation/Federal Aviation Administration, Department of Homeland Security, or State of Tennessee, to support specific procurements. The Authority recognizes that the Procurement Policies and Procedures of the Granting Agency may either supersede or augment those of the Authority. The most stringent Policy and Procedures shall apply in each case, as appropriate.

16.0.2 Whole or Partial Federal Funding - A contract that is federally funded, in whole or in part, is subject to this Policy, Authority rules and regulations, and federal laws and

regulations, including, without limitation, the Federal Aviation Administration ("FAA") Standards for Specifying Construction of Airports (published as Advisory Circular No. 150/5370-10A), 49 C.F.R. Part 18.36, and the DBE requirements set forth in 49 C.F.R. Part 26, as amended.

16.0.4 State or Local Funding - A contract that is funded only by state grants or local funds is subject to state laws and regulations, this Policy, Authority rules and regulations, and the provisions of the Authority's SMWBE Program.

SECTION 17.0: ADDITIONAL PROVISIONS

17.0.1 Records Management - The CPO is the custodian of records related to procurement. The named custodian(s) will comply with the Records Management Policy as adopted by the Authority, as may be amended from time to time.

17.0.2 Amendment – This Policy may be amended by: (A) the Board or (B) the President whenever necessary to comply with applicable federal law or grant conditions or to meet the business needs of the Authority; provided, however, that the President shall notify the Board of any such amendment by the President and the Board shall have the right to rescind or modify any such amendment by the President. The CPO is responsible for reviewing this Policy annually or more often as circumstances warrant.

17.0.3 Exceptions - Exceptions to this Policy can only be authorized by the President, at his or her discretion.

17.0.4 Severability - If any provision of this Policy or the application thereof to any person or entity or circumstances is held invalid, such invalidity shall not affect the other provisions of this Policy or the application of this Policy to any other person or entity or circumstances that can be given effect without the invalid provision or application.

17.0.5 Omitted Procurements - To the extent that a procurement type or category is not addressed by this Policy, it shall be conducted in compliance with the spirit of this Policy, any applicable statutes, laws, regulations, policies and procedures.

17.0.6 Non-Discrimination - Neither the Authority nor its vendors or providers shall discriminate on the basis of race, color, religion, national origin, or gender in the award or performance of contracts, sub-contracts, or purchases involving the Authority.

17.0.7 Federal, State, Local Funding - In the event state, local, and/or federal funding is to be used for Non-Construction Goods or Services, this Policy will be implemented in conformance with applicable state, local, and/or federal statutes, grant assurances, rules and regulations.

17.0.8 Supremacy - In the event of a conflict between this Policy and any applicable state or federal law, the conflicting provision of this Policy will be stricken and applicable law will govern.

17.0.9 Effective Date - This Policy shall become effective one-hundred twenty (120) days from the date the Policy is approved by the President. Until the effective date of this policy, the current MNAA Procurement Policy and Procedures (dated May 12, 2006) shall remain in effect.