

PROCUREMENT POLICY

PEACE RIVER MANASOTA
REGIONAL WATER SUPPLY AUTHORITY

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CHAPTER 1 – GENERAL PROVISIONS

1.1 Purpose

The purpose of this Procurement Policy (Policy) is to provide for the fair and equitable treatment of all persons involved in public purchasing by the Authority, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

1.2 Application

This Policy applies to contracts for the procurement of supplies, services, and construction entered into by the Authority after the effective date unless the parties agree to its application to contracts entered into prior to the effective date. It shall apply to every expenditure of public funds by the Authority for public purchasing irrespective of the source of the funds. When the procurement involves the expenditure of assistance or contract funds from other governmental bodies, the procurement shall be conducted in accordance with any mandatory applicable laws and regulations. Nothing in this Policy shall prevent the Authority from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

1.3 Constructive Notice

All Persons who may bid or be awarded a contract with the Authority, pursuant to this Policy are considered to be on constructive notice of all provisions contained herein.

1.4 Definitions

Authority. The Peace River Manasota Regional Water Supply Authority.

Actual Costs. All direct and indirect costs that have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs only.

Allowable Costs. Direct and indirect costs that have been incurred for services rendered, supplies delivered, or construction built, which may be charged to the Authority.

Architect, Engineer and Land Surveying Services. Those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of the State.

Brand Name or Equal Specification. A specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet Authority requirements and which provides for the submission of equivalent products.

Brand Name Specification. A specification limited to one or more items by manufacturers' names or catalog numbers.

Change Order. A written order signed and issued by the Executive Director or his/her designee directing the contractor to make changes as authorized by the contract. Any work authorized by a change order shall not be started until the change order is signed and issued.

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

Construction Manager at Risk Contract. (CMAR). In this type of contract, the construction manager assists the Authority and Authority architects and engineers in the development and design of a project by providing preconstruction services and then assumes the risk for the construction of the project by serving as the general contractor. CMAR contracts awards a contract for the provision of preconstruction and construction services to the construction manager and a separate contract for the provision architectural/engineering design to a separate entity. A guaranteed maximum price for the completion of work is included in the agreement. CMAR, as it pertains to this policy, refers to all variations of CMAR as allowed by Florida Statute.

Contract. All types of Authority written agreements, regardless of what they may be called, for the procurement of supplies, services, or construction.

Contract Modification. Any written alteration in specifications, delivery point, rate of delivery, period of performance, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

Contractor. Any person having a contract with the Authority.

Cooperative Purchasing. Procurement conducted by, or on behalf of, more than one Public Procurement Unit or by a Public Procurement Unit with an External Procurement Activity.

Cost Analysis. The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid and costs to be reimbursed.

Cost Data. Factual information concerning the cost of labor, material, overhead, and other cost elements that are expected to be incurred, or which have been actually incurred, by the contractor in performing the contract.

Cost Objective. Any unit of work such as a function, an organizational subdivision, or a contract for which provision is made to accumulate and measure separately the cost of processes, products, jobs, capitalized projects, and similar items. A final cost objective is one that has allocated to it both direct and indirect costs.

Cost-Reimbursement Contract. A contract under which a contractor is reimbursed for costs that are allowable and allocable in accordance with the contract terms and the provisions of this Policy, and a fee or profit, if any.

Data. Recorded information, regardless of form or characteristic. Where numeric data is given, both in Arabic numerals and in written language, and where there exists a discrepancy between an Arabic numeral and written language, the written language shall be presumed to be correct and the Arabic numeral shall be presumed to be incorrect.

Designee. A duly authorized representative of a person holding a superior position.

Design-Build Contract. In this type of contract, architectural, engineering, and construction are combined under a single contract. The design-builder oversees and assumes the risk for all phases of design and construction. Design build contracts award a single contract for the provision of both architectural/engineering design and construction services. A guaranteed maximum price for the completion of work is included in the agreement. Design Build, as it pertains to this policy, refers to all variations of Design Build Contracts as allowed by Florida Statute including but not limited to, Progressive Design Build, Fixed Cost Design Build, etc.

Direct or Indirect Participation. Involvement in any manner including, but not limited to, the decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

Employee. An individual drawing a salary or wage from the Authority.

Established Catalog Price. The price included in a catalog, price list, schedule, or other form:

- (1) that is regularly maintained by a manufacturer or contractor;
- (2) that is either published or otherwise available for inspection by customers; and
- (3) that states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

Expendable Supplies. All tangible supplies other than non-expendable supplies.

Financial Interest.

- (1) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than \$100 per year, or its equivalent;
- (2) Ownership of 5% or more of any property or business; or
- (3) Holding a position in a business such as officer, director, trustee, partner, employee, or the like, or holding any position of management.

Governmental Body. Any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, legislative, or judicial branch of any government in the United States of America.

Grant. The furnishing by a governmental body of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction. A contract resulting from such an award is not a grant but a contract.

Gratuity. A payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

Immediate Family. A spouse, children, parents, brothers, and sisters.

Invitation to Bid. All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

Local Public Procurement Unit. Any special district, municipality, or county within the State of Florida.

May. Denotes the permissive.

Non-expendable Supplies. All tangible supplies having an original acquisition cost of over \$100 per unit and a probable useful life of more than one year.

Person. Any business, corporation, firm, partnership, individual, committee, club, other organization, or group of individuals.

Price Analysis. The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

Pricing Data. Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

Procurement. The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Procurement Officer. Any person duly authorized by the Executive Director to administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority.

Public Agency. A governmental body.

Public Procurement Unit. A local public procurement unit.

Purchasing Agency. Any governmental body that is authorized to administer contracts, other than the State Chief Procurement Officer.

Qualified Products List. An approved list of supplies, services, or construction items described by model or catalogue numbers which, prior to competitive solicitation, the Authority has determined will meet the applicable specification requirements.

Regulation. A governmental body's statement, having general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy, or describing organization, procedure, or practice requirements, which has been lawfully promulgated.

Request for Proposals. All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Responsible Bidder or Offeror. A person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit that will assure good faith performance.

Responsive Bidder. A person who has submitted a bid that conforms in all material respects to the requirements set forth in the invitation to bid.

Services. The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

Shall. Denotes the imperative.

Specification. Any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

State. The State of Florida.

State Chief Procurement Officer. The person holding the position as the head of the central procurement office of this State.

State Public Procurement Unit. The Office of the Chief Procurement Officer and any other Purchasing Agency of this State.

Supplies. All property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

Surplus Supplies. Any supplies other than expendable supplies no longer having use to the Authority. This includes obsolete supplies, scrap materials, and nonexpendable supplies that have completed their useful life cycle.

1.5 Public Access to Procurement Information

Procurement information shall be a public record to the extent provided in Chapter 119, Florida Statutes, and shall be available to the public as provided in the Authority's "Statement of Agency Organization and Operation".

CHAPTER 2 – OFFICE OF THE PROCUREMENT OFFICER

2.1 Authority and Duties

- (1) Procurement Officer. Person assigned by the Executive Director as defined in Section 1.4 shall serve as the Procurement Officer for the Authority, and shall be responsible for the procurement of supplies, services, and construction in accordance with this Policy, as well as the management of supplies.
- (2) Duties. In accordance with this Policy, and subject to the supervision of the Executive Director, the Procurement Officer, or a subordinate authorized representative designee of the Procurement Officer, shall:
 - (a) procure or supervise the procurement of all supplies, services, and construction needed by the Authority;
 - (b) exercise direct supervision over the Authority's central stores and general supervision over all other inventories of supplies belonging to the Authority;
 - (c) sell, trade, or otherwise dispose of surplus supplies belonging to the Authority; and
 - (d) establish and maintain programs for specifications development, contract administration, and inspection and acceptance.
- (3) Operational Procedures. Consistent with this Policy, and with the approval of the Executive Director, the Procurement Officer:
 - (a) shall have the authority and responsibility to promulgate procedures governing the procurement, management, control, and disposal of any and all supplies, services, and construction to be procured by the Authority; and
 - (b) may adopt operational procedures relating to the execution of the duties of the Procurement Officer, which may be set forth in a manual or handbook.

2.2 Delegation to Other Authority Officials

The Procurement Officer may not delegate the authority to purchase supplies, services, or construction items to other Authority officials, unless specifically authorized by the Executive Director when such delegation is deemed necessary for the effective procurement of certain supplies, services, or construction. Notwithstanding the foregoing, the Procurement Officer may delegate authority to subordinate authorized representative designees of the Procurement Officer in accordance with Section 2.1 above.

2.3 Unauthorized Purchases

Except as herein provided in this Policy, it shall be a violation of this Policy for any Authority officer, employee, or other person, to order the purchase of any materials or supplies, or make any contract for materials, supplies, or services within the purview of this Policy in the name of or on behalf of the Authority other than through the Procurement Officer or a designee of the Procurement Officer, and the Authority shall not be bound by any purchase order or contract made contrary to the provisions herein.

Consistent with established Personnel Rules and Regulations, the Executive Director may impose any one or more of the following sanctions on an Authority employee for violation of this Section of this Policy:

- (1) oral or written warnings or reprimands;
- (2) suspension with or without pay for specified periods of time; or
- (3) termination of employment.

CHAPTER 3 – SOURCE SELECTION AND CONTRACT FORMATION**3.1 Methods of Source Selection****3.1.1 Competitive Sealed Bidding**

- (1) Conditions for Use. All contracts shall be awarded by competitive sealed bidding except as otherwise provided in Sections 3.1.2 (Competitive Sealed Proposals), 3.1.3 (Contracting for Designated Professional Services), 3.1.4 (Delegation of Authority), 3.1.5 (Sole Source Procurement), 3.1.6 (Emergency Procurements), and 5.4.1 (Public Announcement, Competitive Selection and Negotiation) of this Policy.
- (2) Invitation to Bid. An invitation to bid shall be issued and shall include specifications, and all contractual terms and conditions applicable to the procurement.
- (3) Public Notice. Public notice of the invitation to bid shall be given not less than ten (10) calendar days prior to the date set forth in the notice for the opening of bids. Such notice may be given by mail or by publication in a subscription newspaper of general circulation in each county of the Authority. The public notice shall state the place, date, and time of bid opening.
- (4) 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 amount of each bid and such other relevant information as the Procurement Officer deems appropriate, together with the name of each bidder, shall be recorded.
- (5) 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 bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation to bid shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the invitation to bid, in regulations, or in this Policy.
- (6) 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 or telegraphic notice received in the office designated in the invitation to bid prior to time set for bid opening. After bid opening, corrections in bids shall be permitted 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 provisions of bids prejudicial to the interest of the Authority or fair competition shall be permitted except as permitted above. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw his 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 or contracts based on bid mistakes, shall be supported by a written determination made by the Procurement Officer or a designee of the Procurement Officer whose determination shall be final.
- (7) Award. The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid and is approved by the Authority Board of Directors except as otherwise provided for by Section 3.1.3 (Contracting for Designated Professional Services). In the event the lowest responsible and responsive bid for a construction project exceeds available funds, and such bid does not exceed such funds by more than 15%, the Procurement Officer is authorized, when time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the lowest responsible and responsive bidder, in order to bring the bid within the amount of available funds. Any such negotiated adjustment shall be subject to approval by the Authority Board of Directors.
- (8) Multi-Step Sealed Bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation to bid may be issued requesting the submission of unpriced offers to be followed by an invitation to bid limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

3.1.2 Competitive Sealed Proposals

- (1) Conditions for Use. When the Procurement Officer determines that the use of competitive sealed bidding is either not practicable or not advantageous to the Authority, a contract may be entered into by use of the competitive sealed proposals method.
- (2) Request for Proposals. Proposals shall be solicited through a request for proposals.
- (3) Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 3.1.1(3) (Competitive Sealed Bidding, Public Notice); provided, the minimum time shall be ten (10) calendar days.
- (4) Receipt of Proposals. No proposals shall be opened until the time designated in the public notice of the request for proposals. A register of proposals shall be prepared containing the name of each offeror, the number of bid document modifications received, if any, and a description sufficient to identify the item offered.
- (5) Evaluation Factors. The request for proposals shall state the relative importance of price and other evaluation factors.

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- (6) Discussion with Responsible Offerors and Revisions to Proposals. As provided in the request for proposals, discussions may be conducted with responsible and responsive offerors who submit proposals determined to be reasonably likely to be selected for award for the purpose of clarification to assure full understanding of, and conformance to, the procurement requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers.
- (7) Award. The contract shall be awarded to the lowest responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the Authority, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The Contract file shall contain the basis on which the award is made. The notice of awarded or intended award shall be posted on the Authority's website.

3.1.3 Contracting for Designated Professional Services

- (1) General Authority. Procurement of certain professional services licensed to practice in Florida, shall be by the use of the competitive sealed proposals method set forth in Section 3.1.2 (Competitive Sealed Proposals), except as authorized by Section 3.1.5 (Sole Source Procurement), Section 3.1.6 (Emergency Procurement), or Chapter 5 (Procurement of Construction, Architect, Engineer, and Land Surveying Services), or except when the fee for professional services is limited to \$6,000 or less per fiscal year of the Authority, procurement of professional services may be authorized by Section 3.1.4 (Delegation of Authority).
- (2) Contracts for Legal Services. The Authority Board of Directors may authorize the procurement of legal services by negotiating with a lawyer or lawyers selected or recommended by the Authority Attorney on the basis of experience and skill.
- (3) Contracts for Audit by an Independent Certified Public Accountant. The Authority Board of Directors shall be responsible for selecting an independent certified public accountant to audit the Authority in accordance with Sections 189.418, Florida Statutes and 218.391, Florida Statutes. The auditor selection committee shall be the Authority Board of Directors. The Executive Director, Finance & Administration Manager, and other Authority staff shall serve in an advisory capacity to the auditor selection committee.
- (4) Contracts for Other Services. Notwithstanding the foregoing, the Authority Board of Directors may authorize the procurement of other services by negotiating with organizations selected or recommended by the Executive Director on the basis of experience and skill.

3.1.4 Delegation of Authority

- (1) Only the Authority Board of Directors, or their designee, is authorized to approve contracts on behalf of the Authority.
- (2) The Authority Board of Directors authorizes the Authority's Executive Director, or his/her designee to:

- (a) Approve contracts up to \$100,000 for products and services included in and consistent with the adopted annual budget.
- (b) Approve and execute work assignments for continuing professional services and continuing maintenance services contracts that do not exceed \$100,000 (or as may be approved in the contract) are included in and consistent with the adopted annual budget, and are consistent with Section 287.055, Florida Statutes.
- (c) Approve and execute work assignments for continuing construction services contracts that do not exceed \$150,000 (or as may be approved in the contract) that are included in and consistent with the adopted annual budget, and are consistent with Section 255.20, Florida Statutes.
- (d) Approve and execute certain contract renewals, extensions, amendments, and term contracts (as may be provided in the contract) included in and consistent with the adopted annual budget.
- (3) Threshold Levels for Purchasing.
- (a) All procurement will be conducted in a manner that promotes competition and secures the best value;
- (b) The establishment of thresholds is to aid in the initial determination of the most appropriate procurement method; and
- (c) Construction and electrical services shall be procured as required by Section 255.20, Florida Statutes and services for architecture, professional engineering, or land surveying shall be procured as required by Section 287.055, Florida Statutes. CMAR services shall be procured as required by Sections 255.103, 255.20, and 287.055, Florida Statutes.

Minimum threshold requirements are:

Threshold of Value	Requirement
Up to \$5,000	One (1) quote. <i>May be obtained by verbal quotation, written documentation, or pricing otherwise observed such as state purchasing contract.</i>
\$5,001 to \$25,000	Three (3) quotes (verbal or written). <i>Quotes may be made by written documentation, which may include documented verbal quotations or prices otherwise observed such as state purchasing contract, catalogs, price lists, ads, internet, etc.</i>
\$25,001 to \$100,000	Written Invitations for Quotation <i>A minimum of three (3) written quotes shall be solicited, which may include prices otherwise observed such as state purchasing contract.</i>

Over \$100,000	Formal Competitive Solicitation. <i>Sealed bids are submitted in response to a formal invitation for bids or proposals.</i>
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3.1.5 Sole Source Procurement

A purchase may be made or a contract may be awarded without competition when the Procurement Officer determines in writing, after conducting a good faith review of available sources, that there is only one available source for the required supply, service, or construction item. The Procurement Officer shall insure negotiations are conducted, as appropriate, as to price, delivery, and terms. A record of sole source procurements shall be maintained as a public record and shall list each contractor's name, the amount and type of each contract, a listing of the item(s) procured under each contract, and the number of each purchase order. Due to the uniqueness of real property, contracts for the acquisition of leasehold interests in real property shall generally be considered as a sole source procurement and awarded in accordance with this provision. The Procurement Officer may recommend, and the Authority Board of Directors may direct the award of contracts in accordance with other provisions of this Policy or other procedures designed to promote competition and otherwise fulfill the intent of this Policy under appropriate circumstances. Notwithstanding, nothing in this Policy shall supersede Sections 255.20 or 287.055, Florida Statutes.

3.1.6 Emergency Procurements

Notwithstanding any other provisions of this Policy, the Procurement Officer may make or authorize others to make emergency procurements of supplies, services, or construction items when there exists a threat to public health, welfare, or safety or other substantial loss to the Authority, which requires an emergency procurement; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular vendor shall be included in the procurement file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the vendor's name, the amount and type of the purchase, a listing of the item(s) procured, and the number of the purchase order.

3.1.7 Cancellation of Invitation to Bid or Requests for Proposals

An invitation to bid, a request for proposals, a request for qualifications, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is for good cause and in the best interests of the Authority. The reasons therefore shall be made part of the contract file. Each solicitation issued by the Authority shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the Authority; however, any failure to provide said statement in a bid solicitation shall not bar the Authority from canceling or rejecting all bids. Bidders are on constructive notice of all provisions contained in this Policy. Notice of cancellation shall be sent to all businesses that responded. The notice shall identify the solicitation, 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 items.

3.1.8 Contact with Authority Board and Staff

After issuance of an invitation to bid, a request for proposals, a request for qualifications, or other solicitation, or during renegotiation of an existing contract, prospective offerors or their agents, representatives or persons acting at the request of such offerors are prohibited from contacting members of the Authority Board of Directors and Executive Director or any members of a selection or negotiation committee until after the final recommendation is presented to the Authority Board of Directors for approval or until the solicitation has been canceled or terminated. Any questions concerning a solicitation shall be directed only to the person designated by the procurement. Failure to adhere to this requirement may make the person or team ineligible for selection at the sole discretion of the Authority.

3.2 Qualifications and Duties

3.2.1 Responsibility of Bidders and Offerors

If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility, setting forth the basis of the finding, shall be prepared by the Procurement Officer. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror. A copy of the determination shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the contract file.

3.2.2 Cost or Pricing Data

- (1) Required Submissions Relating to the Award of Contracts. A prospective contractor shall submit cost or pricing data when the contract is expected to exceed \$100,000 and is to be awarded by competitive sealed proposals (Section 3.1.2), or by sole source procurement authority (Section 3.1.5).

EXCEPTION: The submission of cost or pricing data relating to the award of a contract is not required when:

- (a) the contract price is based on adequate price competition;
 - (b) the contract price is based on established catalogue prices or market prices;
 - (c) the contract price is set by law or regulation; or
 - (d) it is determined in writing by the Procurement Officer that the requirements of Section 3.2.2(1) above may be waived, and the determination states the reasons for such waiver.
- (2) Required Submissions Relating to Change Orders or Contract Modifications. A contractor shall submit cost or pricing data with any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was

required in connection with the initial pricing of the contract, when the change or modification involves aggregate increases or aggregate decreases in costs plus applicable profits that are expected to exceed \$25,000.

EXCEPTION: The submission of cost or pricing data relating to the pricing of a change order or contract modification when:

- (a) unrelated and separately priced adjustments for which pricing data would not be required are consolidated for administrative convenience; or
 - (b) it is determined in writing by the Procurement Officer that the requirements of Section 3.2.2(2) above may be waived, and the determination states the reasons for such waiver.
- (3) **Certification Required.** A contractor, actual or prospective, required to submit cost or pricing data in accordance with this Section, shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.
- (4) **Price Adjustment Provision Required.** Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the Authority, including profit or fee, shall be adjusted to exclude any significant sums by which the Authority finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current.

3.2.3 Cost or Price Analysis

A cost analysis or a price analysis, as appropriate, shall be conducted prior to award of the contract other than one awarded under Section 3.1.1 (Competitive Sealed Bidding). A written record of such cost analysis or price analysis shall be made a part of the contract file.

3.2.4 Bid, Performance, and Payment Bonds on Supply or Service Contracts

Bid, performance, and payment bonds or other security may be requested for supply contracts or service contracts as the Procurement Officer deems advisable to protect the Authority's interests. Any such bonding requirements shall be set forth in the solicitation. Bid, performance, or payment bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

3.2.5 Public Entity Crimes

Any bidder or offeror shall provide to the Authority a sworn statement pursuant to Section 287.133(3)(a), Florida Statutes, on Public Entity Crimes. The statement shall be substantially the same as the form contained in Appendix A.

3.2.6 Scrutinized Companies

Section 287.135, Florida Statutes, related to scrutinized companies is applicable to the Authority. Entering into contracts with certain persons for goods or services of \$1,000,000 or more may be prohibited by Section 287.135, Florida Statutes. In addition, Section 287.135(5), Florida Statutes, requires persons submitting a bid or proposal for a contract or before the person enters into or renews a contract for good and services of \$1,000,000 or more to certify that certain requirements are met. By submitting a bid or offer, a bidder or offeror certifies that it is in compliance with Section 287.135, Florida Statutes and agrees to notify the Authority if placement on any of the lists occurs. If bidder or offer submits a false certification, the Authority may terminate the applicable contract and bring a civil action against bidder or offeror, which may result in a penalty equal to the greater of \$2 million or twice the amount of the contract and all reasonable attorney's fees and costs, including any costs for investigations that led to the finding of false certification.

3.2.7 Convicted Vendor List

By submitting a bid or offer, a bidder or offeror certifies that it and its affiliates have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the effective date of the contract.

3.2.8 E-Verify

Section 448.095, Florida Statutes, related to registering and using the E-Verify system to verify the work authorization status of all newly hired employees by a public employer, contractor, or subcontractor, is applicable to the Authority. The Authority may not enter into a contract unless each party to the contract registers with and uses the E-Verify system. By submitting a bid or offer, a bidder or offeror certifies: (i) it is registered with and uses the E-Verify system operated by the U.S. Department of Homeland Security to verify the work authorization status of all newly hired employees, (ii) during the year prior to making its submission or entering into the contract, no contract of bidder or offeror was terminated by a public employer in compliance with Section 448.095, Florida Statutes, (iii) bidder or offeror is and shall remain in compliance with Sections 448.09 and 448.095, Florida Statutes, including securing and maintaining subcontractor affidavits as required by Section 448.095(2)(b), Florida Statutes, and (iv) bidder or offeror shall require all subcontractors performing work under a contract to use the E-Verify system for any employees hired on and after January 1, 2021. Bidder or offeror must provide evidence to the Authority of compliance with Section 448.095, Florida Statutes, prior to entering into a contract. The Authority's receipt of proof that bidder or offeror and each subcontractor are E-Verify system participants is a condition precedent to entering into a contract. The submission of an executed affidavit, similar to the affidavit in Appendix B, from a bidder or offeror and any subcontractor stating it is in compliance with Section 448.095, Florida Statutes, and all employees hired on and after January 1, 2021, have had their work authorization status verified through the E-Verify system shall satisfy this Section 3.2.8. If the Authority has a good faith belief that a bidder or offeror or its subcontractors have knowingly hired, recruited, or referred an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States for employment, the Authority shall terminate the contract and bidder or offeror shall be liable for any additional costs incurred by the Authority as a result of the termination of the contract based on the failure of the bidder or offeror or its subcontractors to comply with the E-Verify requirements.

3.3 Types of Contracts and Contract Administration

3.3.1 Types of Contracts

- (1) General Authority. Subject to the limitations of this Section, any type of contract that is appropriate to the procurement and promotes the best interests of the Authority may be used, provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost reimbursement contract may be used only when a determination is made in writing by the Procurement Officer that such contract is likely to be less costly to the Authority than any other type or that it is impracticable to obtain the supply, service, or construction item required except under such a contract.
- (2) Multi-Term Contracts.
 - (a) Specified Period. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the Authority, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore in the budget of the Authority, as determined by the Authority Board of Directors.
 - (b) Determination Prior to Use. Prior to the utilization of a multi-term contract, it shall be determined in writing:
 - i. that estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - ii. that multi-term contracts for continuing services for engineering, architectural, and landscape architectural services, shall contain a non-exclusivity clause that permits the Authority to utilize, at its option, either the services of the person, business, or organization holding a multi-term continuing service contract on a project basis per appropriate statutes.
 - (c) Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise available to support continuation of performance in a subsequent fiscal period, the multi-term contract shall be canceled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract up to the time of notice of cancellation. The cost of cancellation may be paid from any appropriations available for such purposes.
- (3) Multiple Source Contracting.
 - (a) General. A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation

to order the Authority's actual requirements is limited by Section 672.306(1), Florida Statutes, the Uniform Commercial Code.

- (b) Limitations on Use. A multiple source award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Any multiple source award shall be made in accordance with the provisions of Section 3.1.1 (Competitive Sealed Bidding), Section 3.1.2 (Competitive Sealed Proposals), 3.1.4 (Delegation of Authority) or Section 3.1.6 (Emergency Procurements) as applicable. Multiple source awards shall not be made when a single award will meet the Authority's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements.
- (c) Contract and Solicitation Provisions. The Authority's estimated supply or service requirements shall be specified in the solicitation, and contracts ensuring adequate delivery, service, or product compatibility will be executed, provided that:
 - i. the Authority reserves the right to take bids separately if a particular quantity requirement arises that exceeds its normal requirement or an amount specified in the contract; and
 - ii. the Authority reserves the right to take bids separately if the Procurement Officer approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the Authority.
- (d) Intent to Use. If a multiple source award is anticipated prior to issuing a solicitation, the Authority shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation.

3.3.2 Contract Clauses and Their Administration

- (1) Contract Clauses. All contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Procurement Officer, after consultation with the Authority Attorney, may issue clauses appropriate for supply, service, or construction contracts, addressing among others the following subjects:
 - (a) the unilateral right of the Authority to order in writing changes in the work within the scope of the contract;
 - (b) the unilateral right of the Authority to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;
 - (c) variations occurring between estimated quantities of work in contract and actual quantities;

- (d) defective pricing;
- (e) time of performance and liquidated damages;
- (f) specified excuses for delay or nonperformance;
- (g) termination of the contract for default;
- (h) termination of the contract in whole or in part for the convenience of the Authority;
- (i) suspension of work on a construction project ordered by the Authority, and;
- (j) site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract:
 - i. when the contract is negotiated;
 - ii. when the contractor provides the site or design; or
 - iii. when the parties have otherwise agreed with respect to the risk of differing site conditions.

(2) Price Adjustments.

- (a) Adjustments in price resulting from the use of contract clauses required by Subsection (1) of this Section shall be computed in one or more of the following ways:
 - i. by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - ii. by unit prices specified in the contract or subsequently agreed upon;
 - iii. by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
 - iv. in such other manner as the contracting parties may mutually agree; or
 - v. in the absence of agreement by the parties by a unilateral determination by the Authority of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the Authority, as accounted for in accordance with Authority cost accounting principles regulations, or lack applicable Authority regulations in accordance with generally accepted cost accounting principles, and subject to the provisions of Chapter 8 (Appeals and Remedies).

- (b) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 3.2.2 (Cost or Pricing Data).
- (3) Standard Clauses and Their Modification. The Procurement Officer, after consultation with the Authority Attorney, may establish standard contract clauses for use in Authority contracts. However, the Procurement Officer may, upon consultation with the Authority Attorney, vary any such standard contract clauses for any particular contract.

3.3.3 Contract Administration

A contract administration system designed to ensure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, shall be maintained.

3.3.4 Cost Reimbursement Provisions

If a contract is being funded in whole or in part by assistance from a federal agency, then reimbursement to contractors for incurred costs or cost estimates included in negotiated prices may be subject to appropriate federal cost principles, e.g., Subpart 1-15 of Title 41, Code of Federal Regulations. Individual federal agencies may have requirements applicable to their particular assistance programs. Lacking applicable federal regulations, individual federal agency regulations, or Authority regulations, cost reimbursement shall be in accordance with generally accepted cost accounting principles.

3.3.5 Right to Inspect Plant

The Authority may, at reasonable times, inspect the part of the plant, place of business, or worksite of a contractor or subcontractor at any tier that is pertinent to the performance of any contract awarded or to be awarded by the Authority.

3.3.6 Right to Audit Records

- (1) Audit of Cost or Pricing Data. The Authority may make provision in its contracts such that it can, at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data pursuant to Section 3.2.2 (Cost or Pricing Data) to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books, documents, papers, and records that are pertinent to such cost or pricing data for five (5) years from the date of the final payment under the contract.
- (2) Contract Audit. The Authority shall be entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract, other than a fixed-price contract, to the extent that such books, documents, papers, and records are pertinent to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of five (5) years from the date of the final payment under the prime contract and by the subcontractor for a period of five (5) years from the date of final payment under the subcontract.

- (3) Contractor Records. If a contract is being funded in whole or in part by assistance from a federal agency, then the contract shall include provisions:
- (a) requiring the contractor and subcontractors at any tier to maintain for five (5) years from the date of final payment under the contract, all books, documents, papers, and records pertinent to the contract; and
 - (b) requiring the contractor and subcontractor at any tier to provide to the Authority, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purpose of examining, auditing, and copying them.

3.3.7 Authority Procurement Records

All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the Authority in a contract file by the Procurement Officer, and shall be retained and disposed of by the Authority in accordance with Section 119.021, Florida Statutes.

As the Authority is a “public agency” as defined in Section 119.0701(1)(b), Florida Statutes, the Purchasing Director shall include the following, or substantially similar, contract provision:

Contractors, as defined in Section 119.0701(1)(a), Florida Statutes, shall comply with Florida public records laws (as applicable), specifically to:

- (i) Keep and maintain documents that are required for contractor to perform, which are also the Authority’s public records;
- (ii) Upon request from the Authority, provide the Authority with a copy of the available requested records within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- (iii) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and
- (iv) Meet all requirements for retaining public records and transfer, at no cost, to the Authority, all public records in contractor’s possession upon expiration, or termination, of a contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Authority, upon request from the Authority or its designee, in a format that is compatible with the information technology systems of the Authority and such format shall be mutually agreed upon.

The Authority’s sole and exclusive remedy for a contractor’s breach of this requirement shall be the termination of the contract.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE AUTHORITY’S RECORDS CUSTODIAN AT 941-316-1776.

3.3.8 Notice of Federal Public Policy Requirements

If the contract is being funded in whole or in part by assistance from a federal agency, and the contract is subject to one or more federal public policy requirements, such as equal employment opportunity, fair labor standards, energy conservation, environmental protection, or other similar socio-economic programs, then the Procurement Officer shall include contract provisions giving the contractor notice of these requirements and, where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

CHAPTER 4 - SPECIFICATIONS

4.1 Maximum Practicable Competition

All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the Authority's needs, and shall not be unduly restrictive. The policy enunciated in this Section applies to all specifications including but not limited to, those prepared for the Authority by architects, engineers, designers, and draftsmen.

4.2 Qualified Products List

- (1) Use. A qualified products list may be developed by the Procurement Officer when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary in order to best satisfy the Authority's requirements.
- (2) Solicitation. When developing a qualified products list, a representative group of potential suppliers shall be solicited in writing to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration.
- (3) Testing. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with prior requirements noticed by the Authority.
- (4) Final Approval, Revisions, and Cancellation. The final approval of revisions to a cancellation of qualified products lists shall be made only upon approval of the Procurement Officer.

4.3 Brand Name or Equal Specification

- (1) Use. Brand name or equal specifications may be used when the Procurement Officer determines that:
 - (a) no other design or performance specification or qualified products list is available;
 - (b) time does not permit the preparation of another form of purchase description, not including a brand name specification;
 - (c) the nature of the product of the Authority's requirements makes use of a brand name or equal specification suitable for the procurement; or
 - (d) use of a brand name or equal specification is in the Authority's best interests.
- (2) Designation of Several Brand Names. When brand name or equal specifications are designated, the Procurement Officer shall seek to designate three, or as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.

- (3) Required Characteristics. Unless the Procurement Officer determines that the essential characteristics of the brand name included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics that are required.
- (4) Nonrestrictive Use of Brand Name or Equal Specifications. When a brand name or equal specifications is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name or equal specifications is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

4.4 Brand Name Specification

- (1) Use. Because the use of a brand name specification is restrictive of product competition, it may be used only when the Procurement Officer makes a determination that only the identified brand name item or items will satisfy the Authority's needs.
- (2) Competition. The Procurement Officer shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 3.1.5 (Sole Source Procurement).

4.5 "Buy American" Requirements

If a contract is being funded in whole or in part by assistance from a federal agency, then the Authority shall adhere to the appropriate "Buy American" requirements of the federal agency providing the assistance.

4.6 Energy Conservation

The Authority's solicitation shall seek to promote energy conservation and shall comply with any applicable mandatory standards, policies, rules, or laws.

4.7 Express Warranty

Submission of a bid or offer by a contractor shall constitute an express warranty of the contractor that the goods or services offered pursuant to the contract shall meet the specifications provided in the solicitation.

CHAPTER 5 – PROCUREMENT OF CONSTRUCTION, ARCHITECT, ENGINEER, AND LAND SURVEYING SERVICES**5.1 Management of Construction Contracting****5.1.1 Responsibility for Selection of Methods of Construction Contracting Management**

The Procurement Officer shall have discretion to select the appropriate method of construction contracting management for a particular project, including but not limited to construction management services, design build contracts and other alternative delivery methods that are determined to be a benefit for the specific project and in compliance with Florida Statutes. In determining which method to use, the Procurement Officer shall consider the Authority's requirements, its resources, and the potential contractor's capabilities.

5.2 Bid Security and Performance Bonds**5.2.1 Bid Security**

- (1) Requirement for Bid Security. Bid Security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the Procurement Officer to exceed \$100,000. Bid security shall be a bond provided by a surety company authorized to do business in the State or otherwise supplied in a form satisfactory to the Authority. Nothing herein shall prevent the requirement of such bonds on construction contracts under \$100,000 when the circumstances warrant as solely determined by the Authority.
- (2) Amount of Bid Security. Bid security shall be in an amount equal to at least 5% of the amount of the bid.
- (3) Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation to bid requires bid security, a bid shall be rejected in the event of non-compliance unless it is determined that the bid fails to comply only in a nonsubstantial manner with the security requirements.
- (4) Withdrawal of Bids. If a bidder is permitted to withdraw its bid before award as provided in Section 3.1.1(6) (Competitive Sealed Bidding; Correction or Withdrawal of Bids; Cancellation of Awards), no action shall be taken against the bidder or the bid security.

5.2.2 Contract Performance and Payment Bonds

- (1) When Required - Amounts. When a construction contract is awarded through competitive sealed bid in excess of \$150,000, the following bonds or security shall be delivered to the Authority and shall become binding on the parties upon the execution of the contract:
 - (a) a performance bond satisfactory to the Authority, executed by a surety insurer authorized to do business in the State as a surety, in an amount equal to 100% of the price specified in the contract, conditioned that the contractor perform the contract in the time and manner prescribed in the contract; and

- (b) a payment bond satisfactory to the Authority, executed by a surety insurer authorized to do business in the State as a surety, in an amount equal to 100% of the price specified in the contract, conditioned that the contractor promptly make payments to all persons supplying labor, materials or supplies used directly or indirectly in the performance of the work provided for in the contract, and who are claimants as defined in Section 255.05(1), Florida Statutes.
- (2) Reduction of Bond Amounts. After consultation with the Authority Attorney and notice to the Authority Board of Directors through the Executive Director, the Procurement Officer is authorized to reduce the amount of performance and payment bonds to 50% of the contract price for each bond when a written determination is made that it is in the best interests of the Authority to do so.
- (3) Authority to Require Additional Bonds. Nothing in this Section shall be construed to limit the authority of the Authority to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Subsection (1) of this Section.

5.3 Fiscal Responsibility

- (1) Approval By the Authority Board of Directors. Every contract modification, change order, or contract price adjustment in excess of Twenty-five Thousand Dollars (\$25,000), shall be subject to prior approval by the Authority Board of Directors after receiving a report as to the effect of the contract modification, change order, or contract price adjustment on the total project budget or the total contract budget.
- (2) Delegation of Authority. Contracts may provide for delegated authority to the Executive Director or other Authority agent designated by the Executive Director to approve and process contract modifications, change orders or contract price adjustments totaling less than Fifty Thousand Dollars (\$50,000) cumulatively. Any additional modification, change order or contract price adjustment shall be allowed only in such amount as may be authorized and approved by the Authority Board of Directors.

5.4 Professional Architectural, Engineering, Landscape Architectural, or Surveying and Mapping Services

5.4.1 Public Announcement, Competitive Selection and Negotiation

- (1) Service or Study Solicitation. It is the policy of the Authority to publicly announce all requirements for professional architectural, engineering, landscape architectural, or surveying and mapping services and to negotiate such contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices as required by Section 287.055, Florida Statutes. In the procurement of such services, persons interested in providing such services may be required to submit a statement of qualifications, a proposal, or other such information consistent with Section 287.055, Florida Statutes.
- (a) Scope of Project Requirements. Written project requirements will be developed and made

available to interested parties. The scope of project requirements shall indicate the nature and scope of the professional services needed, including but not limited to, the following:

- i. the location and general purpose of the service or study;
 - ii. the objectives of the study or service;
 - iii. estimated period of time needed for the service or the study;
 - iv. the estimated cost of the project;
 - v. whether the proposed study or service would duplicate any prior or existing study or service;
 - vi. list of current contracts or prior services or studies that are related to the proposed study or service; and
 - vii. criteria upon which project statements of qualifications, proposals, or other such required submittals will be evaluated, including submittal rules and formats (e.g. page limitations, font sizes, electronic or paper copies, etc.).
- (b) Public Announcement. The public announcement for services requested shall be in a uniform and consistent manner as referenced in Section 287.055, Florida Statutes, through means intended to reach a wide audience of persons potentially qualified to conduct such services. Multiple means will be employed in the public announcement, and such means may include, but are not limited to: advertisement in newspapers of general circulation in the Authority service area or larger area as appropriate; posting on the Authority website; dissemination by electronic or conventional mail to listing of persons previously requesting notification of Authority projects; or subscription distribution services. The public announcement shall be accompanied by an invitation for persons to submit an indication of interest in performing the required services; how they may obtain the scope of project requirements and other selected project information; and the period of time within which such indications of interest will be accepted, which period shall not be less than twenty-eight (28) calendar days from the date of the public announcement.
- (c) Review of Public Announcement and Project Requirements. The public announcement and scope of project requirements shall be approved by the Executive Director prior to public distribution of these items.
- (d) Re-solicitation. If the Authority receives indications of interest from less than three (3) persons, it may resolicit indications of interest from all persons previously solicited and from such additional persons as it may deem advisable. Thereafter, the Authority may proceed to consider those persons responding to the solicitation or re-solicitation.
- (e) Modifications Prohibited. After the publicized submission time and date, indications of interest shall not be modified or allowed to be modified in any manner.

Notwithstanding, a person that has submitted an indication of interest by responding to a solicitation may withdraw its indication of interest if a re-solicitation occurs in accordance with (d) above.

- (f) Exemptions. This section shall not apply to a professional service contract for a project whose basic construction cost is estimated by the agency to be \$325,000 or less or for a planning or study activity when the fee for professional services is \$35,000 or less (or as may be updated in Section 287.055, Florida Statutes), or in cases of valid public emergency so certified by the Executive Director. This section shall not apply to any requirement for professional services if a continuing contract to provide such services is in effect, a determination is made to utilize the continuing contract to obtain such services, and such professional services are below the thresholds provided in Section 287.055(2)(g), Florida Statutes, or a continuing contract, whichever is lower.
- (2) Consultant Selection. For each solicitation in which a public announcement is made, the Executive Director shall appoint a Professional Services Evaluation Committee (PSEC) to review and evaluate submittals and make recommendations on professional services selection. The PSEC shall include no less than three (3) and no more than five (5) voting members. Non-voting advisory staff may be appointed to assist the PSEC by the Executive Director as needed. PSEC voting members shall generally consist of employees of the Authority and Authority Customer staff, as defined by the Authority's Master Water Supply Agreement, but may include others when deemed appropriate by the Executive Director. The Procurement Officer may serve as a member of the PSEC. The PSEC shall be appointed prior to the public announcement being made.
- (3) Evaluation. Following a determination by the Procurement Officer that the written submittals of qualifications, proposals, performance data, and other information requested complies with the requirements of the public announcement, including being timely and properly received, they shall be evaluated by the PSEC. The Procurement Officer shall assimilate submittal materials and disseminate such to PSEC members. A minimum of one (1) PSEC meeting shall be held to review and rank submittals. All PSEC meetings shall be conducted in accordance with Section 286.011, Florida Statutes, the Florida Sunshine Law, and PSEC voting members shall refrain from any selection-related discussions with other committee members outside of a PSEC meeting .
- (a) The PSEC shall determine qualifications, interest, and availability by reviewing all written responses properly and timely received that express an interest in performing the services. The PSEC determinations shall be based upon the following considerations:
- i. competence, including technical education and training or project personnel;
 - ii. experience in the kind of project to be undertaken;
 - iii. projected workload and availability of adequate personnel, equipment and facilities;
 - iv. the extent of repeat business of the firm;

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- v. past record of professional accomplishments;
 - vi. office location proximity to Authority service area;
 - vii. past record of performance on Authority projects; and
 - viii. other applicable project specific factors determined by the Authority prior to the issuance of the public announcement
- (b) Based on application of evaluation criteria in this Section above applied to written submittals, the PSEC shall prepare a ranked short-list of at least three (3) firms determined to be most qualified to conduct the services requested. At the discretion of the PSEC, all firms on the ranked short-list may be interviewed, and re-ranked based on results of the interviews.
- (c) The final ranked short-list shall be submitted to the Executive Director for consideration, and upon approval, contract negotiation shall be initiated or in the alternative, the Executive Director is authorized to present the ranked short-list to the Authority Board of Directors for consideration and approval for contract negotiations.
- (4) Contract Negotiations. Upon approval of the ranked short-list by either the Executive Director or the Authority Board of Directors, contract negotiations with the highest ranked firm on the short-list shall begin. Negotiations shall be conducted by the Executive Director or his/her designee(s), hereafter referred to as 'Authority Negotiators'.
- (a) Negotiations shall proceed in accordance with Section 287.055(5), Florida Statutes, as may be amended from time to time.
 - (b) Negotiated contract including scope of project and fees shall be submitted to the Procurement Officer for administrative approval by the Executive Director and preparation of recommendation to the Authority Board of Directors. Nothing in this Section shall prohibit the Authority Board of Directors from rejecting the negotiated contract and directing Authority staff to resolicit the services.
- (5) Truth-In-Negotiation Certificate. For all lump sum or cost-plus-fixed-fee professional service contracts over the statutorily specified threshold amount, the Authority shall require the firm receiving the award to execute a truth-in-negotiation certificate that meets the requirements of Section 287.055(5), Florida Statutes, as may be amended from time to time.
- (6) Prohibition Against Contingent Fees. Each contract entered into by the Authority for professional service shall contain a prohibition against contingent fees that meets the requirements of Section 287.055(6), Florida Statutes, as may be amended from time to time.
- (7) Continuing Contracts. Nothing in this Section 5.4.1 shall be construed to prohibit continuing contracts for professional services between a person and the Authority that meets the requirements of Section 287.055, Florida Statutes.

5.4.2 Design-Build Contracts

- (1) Design-Build Contracts. Design-build contracts may be awarded in accordance with Section 287.055(9), Florida Statutes. The definitions in Section 287.055(2), Florida Statutes, related to design-build contracts are applicable.

The Design Criteria Package shall be prepared and sealed by a design criteria professional employed by or retained by the Authority in accordance with Section 5.4.1, Subsections (1) through (5), of this Policy. A design criteria professional who has been selected to prepare a design criteria package shall not be eligible to render services under a design-build contract executed pursuant to the design criteria package prepared by the design criteria professional.

- (2) Procedures for the Award of Design-Build Contracts.

Procedures for the award of design-build contracts shall include the minimum requirements found in Section 287.055(9)(c), Florida Statutes.

- (3) The Procurement Officer may develop additional procedures consistent with this Policy and policies of the Authority Board of Directors as may be necessary to implement the provisions of this subsection , and such procedures may be included within a solicitation.

5.4.3. Construction Manager at Risk

CMAR contracts may be awarded in accordance with Sections 255.103, 255.20, and 287.055, Florida Statutes, and Section 5.4.1 (1)-(6) of this Policy.

5.4.4 Owner-Direct Purchasing

- (1) Florida law allows government entities to make certain tax-free purchases for public works construction projects under Rule 12A-1.094, Florida Administrative Code (F.A.C.). To enable the Authority to purchase materials in a manner that will result in the savings of sales tax on certain tangible personal property needed for projects, construction contractors (Contractor) may recommend direct purchases that will result in significant tax savings to the Authority. The Authority will review these recommendations and will make owner-direct purchases when appropriate. Owner-Direct Purchases will be governed by the following:

- (a) All requirements of Rule 12A-1.094, F.A.C. and Florida Statute 212.08(6) must be met.

- (b) Direct Purchase Orders. The Authority will issue its purchase order directly to the vendor supplying the materials the Contractor will use and will provide the vendor with a copy of the Authority's Florida Consumer's Certification of Exemption. The Authority will issue to the vendor and to the Contractor a Certificate of Entitlement as provided in Florida Administrative Code Rule 12A-1.094 (4)(c)4. (Appendix C)

- (c) Inspection by Contractor. Upon delivery Contractor shall inspect the materials or tangible personal property, and if it approves them, Contractor shall provide a written statement from the Contractors Project Manager to the Authority's Project Manager certifying that

- Contractor approves the materials or tangible personal property. The Authority will attach this certification to the invoice and the Authority will make payment directly to the vendor.
- (d) Title. The Authority will take title to the materials or tangible personal property at the time of purchase or delivery by the vendor and will retain title to all materials or tangible personal property it purchases.. The Authority may require Contractor to obtain and manage warranties on the materials or tangible personal property in its contract with Contractor.
- (e) Risk of Loss. The Authority will assume the risk of loss for the direct purchase materials or tangible personal property upon delivery. The Authority may do this by being named as an additional insured on the Contractors Builder’s Risk insurance, which shall continue to cover the direct purchase materials. Alternatively, the Authority may purchase and maintain or other insurance sufficient to protect against any loss of, or damage to owner-purchased materials. Responsibilities for care and safeguarding of the materials or tangible personal property and property insurance will be set forth in the contract with the Contractor.

CHAPTER 6 – COST PRINCIPLES

6.1 Cost Principles Regulations Required

The Procurement Officer shall promulgate a procedure that shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs where the contract provides for the reimbursement of costs; provided, that if a written determination is approved by the Authority Board of Directors, such procedure may be modified by contract.

CHAPTER 7 – SUPPLY MANAGEMENT

7.1 General Supervision

The Procurement Officer shall have general supervision of the management of supplies during their entire life cycle. The objectives of supply management include preventing waste, continuing utilization of supplies, and obtaining a fair return of value upon disposal of supplies. In order to achieve these objectives, sound inspection, testing, warehousing, and inventory practices are called for, and effective means of transferring and disposing of property shall be utilized.

7.2 Quality Assurance, Inspection and Testing

The Procurement Officer shall take such steps as are deemed desirable to ascertain or verify that supplies, services, or construction items procured by the Authority conform to specification.

7.3 Inventory Management

The Procurement Officer shall have general supervision of all inventoried tangible personal property, whether warehoused or in use, belonging to the Authority. All warehouses and similar storage areas shall be inventoried at least annually. The Procurement Officer shall have general supervision of the determination of appropriate stock levels and economic order quantities for all inventories belonging to the Authority.

7.4 Warehousing and Storage

The Procurement Officer shall exercise general supervision of any receiving, storage, and distribution facilities and services maintained and operated by the Authority.

7.5 Authorization to Dispose of Surplus Supplies

No employee of the Authority shall transfer, sell, trade-in, or otherwise dispose of supplies owned by the Authority without written authorization of the Procurement Officer, following the declaration by the Authority Board of Directors that such supplies are surplus.

7.6 Transfer of Excess and Surplus Supplies

Insofar as is feasible and practical, the Procurement Officer shall transfer excess supplies declared surplus by the Authority Board of Directors to other agencies or units of government. The price of the supply transferred shall be the fair market price based, where possible, on previous sales of similar products in the open market, or on an appraised value, and shall be one mutually agreed upon between the owning agency and the recipient, and approved by the Procurement Officer. If agreement cannot be reached, the Procurement Officer shall establish the price. When a supply is transferred to other units of government, the recipient shall agree in writing not to transfer title or otherwise dispose of the supply within twelve (12) months of ownership without prior approval of the Procurement Officer.

7.7 Disposition of Surplus Supplies

Supplies declared surplus by the Authority Board of Directors shall be offered through competitive sealed bids, public auction, or posted prices. It is recognized, however, that some types and classes of items can be sold or disposed of more readily and advantageously by other means, including barter. In such cases, and also where the nature of the supply or unusual circumstances call for its sale to be restricted or controlled, the Procurement Officer may employ such other means, including appraisal, provided the Procurement Officer makes a written determination that such procedure is advantageous to the Authority.

7.8 Auctions

When authorized by the Authority Board of Directors, Authority employees or an experienced professional auctioneer may be used to cry the sale and assist in the preparation of the sale.

7.9 Posted Prices

Supplies declared surplus by the Authority Board of Directors may be sold at posted prices as determined by the Procurement Officer when such prices are based on fair market value and the sale is conducted pursuant to written policies established by the Authority Board of Directors.

7.10 Trade-In

Surplus supplies may be traded in only when the Procurement Officer determines the trade-in value is expected to exceed the value estimated to be obtained through the sale or other disposition of such supplies.

CHAPTER 8 – APPEALS AND REMEDIES

8.1 Protests

Section 120.57(3), Florida Statutes, and Section 287.042(2)(c), Florida Statutes, are applicable to all protests to contract solicitations or awards. Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post the bond or other security requirement by law within the time allowed for filing a bond shall constitute a waiver of proceeding under Chapter 120, Florida Statutes.

8.2 Remedies for Solicitations or Awards in Violation of the Law

- (1) Prior to Bid Opening or Closing Date for Receipt of Proposals. If, prior to the bid opening or the closing date for receipt of proposals, the Procurement Officer determines that a solicitation is in violation of federal, state, or local law or ordinance, then the solicitation shall be canceled or revised to comply with applicable law.
- (2) Prior to Award. If after bid opening or the closing date for receipt of proposals, but prior to the award of contract, the Procurement Officer determines that a solicitation or a proposed award of a contract is in violation of federal, state, or local law or ordinance, then the solicitation or proposed award shall be canceled.
- (3) After Award. If, after an award, the Authority Board of Directors determines that a solicitation or award of a contract was in violation of federal, state, or local law or ordinance, then:
 - (a) If the person awarded the contract has not acted fraudulently or in bad faith:
 - i. if the violation of federal, state, or local law or ordinance can be cured, then the contract may be amended or ratified and affirmed, provided it is determined that doing so is in the best interest of the Authority; or
 - ii. if the violation of federal, state, or local law or ordinance cannot be cured, then the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract excluding attorney's fees, prior to the termination.
 - (b) If the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interests of the Authority.

8.3 Contract Claims

- (1) Notice of Contract Claims. A contractor may, in an attempt to resolve a dispute prior to the commencement of an action in a court of competent jurisdiction in accordance with the applicable contract, submit a request for a conference with the Procurement Officer to discuss a dispute, including but not limited to disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission. All such disputes must be valued at less than Ten Thousand Dollars (\$10,000.00).

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- (2) Authority of the Procurement Officer to Resolve Contract Claims. The Procurement Officer is authorized to resolve any dispute arising out of the performance of a Authority contract and recommend to the Executive Director, prior to the commencement of an action in a court of competent jurisdiction, but may not settle any such protest or claim for consideration of Ten Thousand Dollars (\$10,000.00) or exceeding Ten Thousand Dollars (\$10,000.00) in value without the prior approval of the Authority Board of Directors. This authority shall be exercised in accordance with regulations promulgated by the Authority Board of Directors.
 - (3) Review. The Procurement Officer will attempt to resolve the dispute within fourteen (14) days of receipt of notice.
 - (4) Nothing in this Section 8.3 shall supersede any contract provision regarding disputes or breaches of contract, and contractors shall proceed in accordance with such contractual provisions.

CHAPTER 9 – INTERGOVERNMENTAL RELATIONS

9.1 Cooperative Purchasing Authorized

The Authority may purchase commodities and contractual services, other than services required to be procured in accordance with Section 5.4 (Professional Architectural, Engineering, Landscape Architectural, or Surveying and Mapping Services), in accordance with Section 189.4221, Florida Statutes.

9.2 Sale, Acquisition or Use of Supplies

The Authority may sell to, acquire from, or use any supplies belonging to another Public Procurement Unit independent of the requirements of Chapter 3 (Source Selection and Contract Formation) and Chapter 7 (Supply Management) of this Policy.

9.3 Cooperative Use of Supplies or Services

The Authority may enter into a contract, subject to approval by the Authority Board of Directors, independent of the requirements of Chapter 3 (Source Selection and Contract Formation) and Chapter 7 (Supply Management) of this Policy, with any other Public Procurement Unit for the cooperative use of supplies or services under the terms agreed upon between the parties, as long as such services are not required to be procured in accordance with Section 287.055, Florida Statutes.

9.4 Joint Use of Facilities

The Authority may enter into contracts, subject to approval by the Authority Board of Directors, for the common use or lease of warehousing facilities, capital equipment, and other facilities with another governmental entity under the terms agreed upon between the parties.

9.5 Supply of Personnel, Information and Technology

- (1) Supply of Personnel. As with any Public Procurement Unit so authorized, the Authority is authorized, in its discretion, upon written request from another government agency, to provide personnel to the requesting government agency. The government agency making the request shall pay the Authority the direct and indirect cost of furnishing the personnel, in accordance with a contract between the parties.
- (2) Supply of Services. As with any government agency so authorized, the informational, technical, and other services of the Authority may be made available to any other government agency. The requesting government agency shall pay for the expenses of the services so provided by the Authority, in accordance with an agreement between the parties.
- (3) Information Services. Upon request, the Procurement Officer may make available to government agencies the following services, among other:
 - (a) standard forms;

- (b) printed manuals;
 - (c) product specifications and standards;
 - (d) quality assurance testing services and methods;
 - (e) qualified product lists;
 - (f) source information;
 - (g) common use commodities listings;
 - (h) supplier pre-qualification information;
 - (i) supplier performance ratings;
 - (j) debarred and suspended bidders lists;
 - (k) forms for invitations to bid, requests for proposals, instructions to bidders, general contract provisions, and other contract forms; and
 - (l) contracts or published summaries thereof, including price and time of delivery information.
- (4) Technical Services. The Procurement Officer may provide the following technical services, among others:
- (a) development of products specifications;
 - (b) development of quality assurance test methods, including receiving, inspection, and acceptance procedures;
 - (c) use of product testing and inspection facilities; and
 - (d) use of personnel training programs.
- (5) Fees. The Procurement Officer may enter into contracts, subject to approval by the Authority Board of Directors, and publish a schedule of fees for the services provided under Subsections (3) and (4) of this Section.

9.6 Use of Payment Received by the Authority

All payments from any government agency received by the Authority shall be available to be used by the Authority as authorized by law.

9.7 Public Procurement Units in Compliance with Ordinance Requirements

Where a government agency administering a cooperative purchase complies with the requirements of this Policy, such government agency participating in such a purchase shall be deemed to have complied with this Policy. Government agencies may not enter into a cooperative purchasing agreement for the purpose of circumventing this Policy.

CHAPTER 10 – ETHICS IN PUBLIC CONTRACTING

10.1 Criminal Penalties

The extent that violations of the ethical standards of conduct set forth in this Chapter 10 constitute violations of the State Criminal Code and shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this Chapter 10.

10.2 Employee Conflict of Interest

It shall be unethical for any Authority employee to participate directly or indirectly in a procurement contract when the Authority employee knows that:

- (1) The Authority employee or any member of the Authority employee's immediate family has a financial interest pertaining to the procurement contract; or
- (2) Any other person, business, or organization with whom the Authority employee or any member of an Authority employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.

An Authority employee or any member of an Authority employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

10.3 Gratuities and Kickbacks

- (1) Gratuities. It shall be unethical for any person to offer, give, or agree to give any Authority employee or former Authority employee, or for any Authority Employee or former Authority employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.
- (2) Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- (3) Contract Clause. The prohibition against gratuities and kickbacks prescribed in this Chapter 10 shall be conspicuously set forth in every contract and solicitation therefor.

10.4 Prohibition Against Contingent Fees

It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

10.5 Contemporaneous Employment Prohibited

It shall be unethical for any Authority employee who is participating directly or indirectly in the procurement process to become or to be, while such an Authority employee, the employee of any person contracting with the Authority by whom the employee is employed.

10.6 Waivers from Contemporaneous Employment Prohibition and Other Conflicts of Interest

The Authority Board of Directors may grant a waiver from the employee conflict of interest provision (Section 10.2) or the contemporaneous employment provision (Section 10.5) upon making a written determination that:

- (1) the contemporaneous employment or financial interest of the Authority employee has been publicly disclosed;
- (2) the Authority employee will be able to perform his/her procurement functions without actual or apparent bias or favoritism; and
- (3) the award will be in the best interests of the Authority.

Notwithstanding, nothing in this Policy shall supersede or waive the requirements of Part III of Chapter 112, Florida Statutes, Code of Ethics for Public Officers and Employees.

10.7 Use of Confidential Information

It shall be unethical for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

10.8 Conflicts of Interest

- (1) Prohibiting Contracts where Conflicts are Found to Exist. The Authority shall not engage in contracts with consultants or professionals whose prior record, work history, and experience indicate ongoing business relationships that may be substantially in conflict with the duties and services that will be required by the Authority.
- (2) Standards and Regulations for the Determination of Potential Conflicting Contractual Obligations. The Procurement Officer shall, as time permits, develop standards and regulations for the prospective determination of potential conflicting contractual obligations that may impair the performance of the professionals or consultants solicited by the Authority. The standards and regulations may require, but shall not be limited to, the inclusion of one or more of the following in a request for proposals, invitation to bid, announcement, or other solicitation or contract:

-
- (a) An affidavit providing that the professional or consultant is not currently engaged or will not become engaged in any obligations, undertakings or contracts that will require the professional to maintain an adversarial role against the Authority or that will impair or influence the advice or recommendations provided to the Authority.
 - (b) The disclosure of all potentially conflicting contractual relationships and the full disclosure of contractual relationships deemed to raise a serious question of conflicts.
 - (c) Appropriate restrictions or limitations on the prior work history and qualifications of qualified or responsive bidders.
 - (d) The standards and regulations shall set forth appropriate requirements based upon the nature and scope of the services that are to be procured and shall be narrowly tailored so as to not unduly restrict competition, while assuring the Authority of undivided loyalty and services of the highest quality.
- (3) Suspension. Any professional or consultant whose bid is rejected or who is denied a contract based solely upon a determination of the existence of conflicting contractual obligations may protest the decision in accordance with Section 8.1 .
- (4) Ethical Standards. Any professional or consultant submitting false information, intentionally submitting misleading information, or repeatedly failing to comply with the standards and regulations implementing this Section 10.8 shall be deemed to be in violation of the ethical standards of and shall be subject to the sanctions provided in this Chapter 10.
- (5) Definition of a Professional and a Consultant. Professional or consultant as used in this section shall be deemed to include those contractors who, as individuals or duly organized business entities have been or will be retained by the Authority for the purpose of providing recommendations or advice related to planning level or policy level decisions, or who will be engaged in the collection of data or research that will provide the basis for such decisions, as well as those who will be retained to supervise and monitor the performance of contractors or subcontractors of any nature.

10.9 Sanctions

- (1) Employees. Consistent with established Personnel Rules and Regulations, the Executive Director may impose any one or more of the following sanctions on a Authority employee for violations of the ethical standards in this Chapter 10:
- (a) oral or written warnings or reprimands;
 - (b) suspension with or without pay for specified periods of time; or
 - (c) termination of employment.

-
- (2) Nonemployees. The Authority Board of Directors may impose any one or more of the following sanctions on a non-employee for violations of the ethical standards:
- (a) written warnings or reprimands;
 - (b) termination of contracts; or
 - (c) debarment or suspension.

10.10 Recovery of Value Transferred or Received in Breach of the Ethical Standards

- (1) General Provisions. The value of anything transferred or received in breach of the ethical standards of this Policy by an Authority employee or a non-employee may be recovered from both Authority employee and non-employee.
- (2) Recovery of Kickbacks by the Authority. Upon a showing that a subcontractor makes a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or other thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the Authority and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

ADOPTED by the Peace River Manasota Regional Water Supply Authority Board of Directors on May 6, 1992 and amended as follows:

AMENDMENTS:

June 9, 1997	Chapter 3.1.3(3) Contracts for Audit by an Independent Certified Public Accountant (formerly 3-103(3))
April 7, 1999	Chapter 8.4 Procedure for Protests of Plans and Specifications (formerly 8-104) Chapter 8.5 Procedure for Pre-Bid Protests (formerly 8-105)
September 2, 2009	Chapter 3.1.8 Contact with Authority Board and Staff (formerly 3-108)
December 12, 2011	Chapter 3.1.4 Delegation of Authority (formerly 3-104)
July 1, 2013	Amendments incorporated and Policy reformatted
January 28, 2016	Chapter 5.4 Professional Architectural, Engineering, Landscape Architectural, or Surveying and Mapping Services Subsection 5.4.1 Public Announcement, Competitive Selection and Negotiation
December 5, 2018	Chapter 1.4 Definitions. Removal of Chapter 2.1 Establishment, Appointment, and Tenure. Renumbering of Chapter 2.1 (formerly 2.2), Chapter 2.2 (formerly 2.3) and Chapter 2.3 (formerly 2.4). Chapter 3.1.4(3) Threshold Levels for Purchasing. Addition of Chapter 4.8 Scrutinized Companies List. Chapter 5.3 Fiscal Responsibility
October 1, 2021	Chapter 1.4 Definitions. Edits to Chapter 3.1.4(3)(c) Threshold Levels for Purchasing; Chapter 3.3.7 Authority Procurement Records; Chapter 5.4.4 Responsibility for Selection Methods of Construction Contracting Management; Chapter 5.4.1 Public Announcement, Competitive Selection and Negotiation; Chapter 5.4.2 Design Build Contracts; Chapter 7.5 Authorization to Dispose of Surplus Supplies; Chapter 8.1 Protests; Chapter 8.2 Remedies for Solicitations or Awards in Violation of the Law; Chapter 8.3 Contract Claims; Chapter 9 Intergovernmental Relations. Statutory Updates to Chapter 3.1.3 (3) Contracts for Audit by an Independent Certified Public Accountant; Chapter 3.2.6 (formally Chapter 4.8) Scrutinized Companies. Addition of Chapter 3.2.7 Convicted Vendor List, Chapter 3.2.8 E-Verify; Chapter 5.4.3 Construction Manager at Risk; Chapter 5.4.3 Construction Manager at Risk and Appendix B E-Verify Affidavit. Removal of Chapter 8.4 Procedure for Protests of Plans and Specifications; Chapter 8.5 Procedure for PreBid Protests.
December 7, 2022	Addition of 5.4.4 Owner-Direct Purchasing and Appendix C Certificate of Entitlement.

APPENDIX A

Public Entity Crimes Form

SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a),
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to PEACE RIVER MANASOTA REGIONAL WATER SUPPLY AUTHORITY by

_____ (Print individual's name and title)

for _____ (Print name of entity submitting sworn statement)

whose business address is _____

and (if applicable) its Federal Employer Identification Number (FEIN) is _____ (If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: _____).

2. I understand that a 'public entity crime' as defined in Section 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that 'convicted' or 'conviction' as defined in Section 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an 'affiliate' as defined in Section 287.133(1)(a), Florida Statutes, means:
- a) A predecessor or successor of a person convicted of a public entity crime; or
 - b) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term 'affiliate' includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

I understand that a 'person' as defined in Section 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts

or applies to transact business with a public entity. The term 'person' includes those officers, directors, executives, partners, shareholders, employees, members and agents who are active in management of an entity.

5. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. **(Indicate which statement applies.)**

_____ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. **(Attach a copy of the final order.)**

I UNDERSTAND THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017 FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

(Signature)

(Date)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 20__ by _____ as _____ of _____, a _____ company organized under the laws of the State of _____, on behalf of the company, who is personally known to me or has produced _____ as identification.

Notary Public

Name (Printed) _____

My commission expires _____.

(Printed typed or stamped Commissioned name of Notary Public)

APPENDIX B
E-Verify Affidavit

Contract Holder E-Verify Registration and Affidavit

As provided in Section 33 of the Agreement, pursuant to Section 448.095, Florida Statutes, beginning January 1, 2021, Contractor shall register with and use the U.S. Department of Homeland Security's E-Verify system, (<https://e-verify.uscis.gov/emp>) to verify the work authorization status of all Contractor employees hired on and after January 1, 2021. Additionally, Contractor shall require all subcontractors performing work under this Agreement to use the E-Verify system for any employees hired on and after January 1, 2021. Contractor must provide evidence to the Authority of compliance with Section 448.095, Florida Statutes, prior to entering the Agreement

Affidavit

I hereby certify that _____ (Contract holder) does not employ, contract with, or subcontract with any unauthorized aliens, and is otherwise in full compliance with Section 448.095, Florida Statutes.

All employees hired on or after January 1, 2021, have had their work authorization status verified through the E-Verify system.

A true and correct copy of _____ (Contract holder) proof of registration in the E-Verify system is attached to this Affidavit.

Signature Date

Print Name

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ (date) by _____ (name of officer or agent, title of officer or agent) of _____ (name of contractor company acknowledging), a _____ (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ (type of identification) as identification.

Notary Public

Name typed, printed or stamped

My Commission Expires: _____

APPENDIX C
Certificate of Entitlement

CERTIFICATE OF ENTITLEMENT

The undersigned authorized representative of Peace River Manasota Regional Water Supply Authority, (hereinafter "Governmental Entity"), Florida Consumer's Certificate of Exemption Number 85-80126622170C-4, affirms that the tangible personal property purchased pursuant to Purchase Order Number _____ from _____ (Vendor) on or after _____ (date) will be

incorporated into or become a part of a public facility as part of a public works contract pursuant to the contract for the construction of _____ dated _____ with _____ (Name of Contractor).

Governmental Entity affirms that the purchase of the tangible personal property contained in the attached Purchase Order meets the following exemption requirements contained in section 212.08(6), F.S., and rule 12A-1.094, F.A.C.:

You must initial each of the following requirements:

- _____ 1. The attached Purchase Order is issued directly to the vendor supplying the tangible personal property the Contractor will use in the identified public works.
- _____ 2. The vendor's invoice will be issued directly to Governmental Entity.
- _____ 3. Payment of the vendor's invoice will be made directly by Governmental Entity to the vendor from public funds.
- _____ 4. Governmental Entity will take title to the tangible personal property from the vendor at the time of purchase or of delivery by the vendor.
- _____ 5. Governmental Entity assumes the risk of damage or loss at the time of purchase or delivery by the vendor.

Governmental Entity affirms that if the tangible personal property identified in the attached Purchase Order does not qualify for the exemption provided in section 212.08(6), F.S. and rule 12A-1.094, F.A.C., Governmental Entity will be subject to the tax, interest, and penalties due on the tangible personal property purchased. If the Florida Department of Revenue determines that the tangible personal property purchased tax-exempt by issuing this Certificate does not qualify for the exemption, Governmental Entity will be liable for any tax, penalty, and interest determined to be due.

I understand that if I fraudulently issue this certificate to evade the payment of sales tax I will be liable for payment of the sales tax plus a penalty of 200% of the tax and may be subject to conviction of a third degree felony.

Under the penalties of perjury, I declare that I have read the foregoing Certificate of Entitlement and the facts stated in it are true.

Signature of Authorized Representative

Title

Purchaser's Name (Print or Type)

Date

Federal Employer Identification Number: 59-2417483

Telephone Number: 941-316-1776

You must attach a copy of the Purchase Order to this Certificate of Entitlement.