

CHAPTER 6 PROCUREMENT

Sec. 6-1 **BASIS AND PURPOSE.** The purpose of these requirements is to provide for purchases of materials, supplies, equipment and services for the operational requirements of the DuPage Airport Authority and in the best interests of the DuPage Airport Authority.

It is the objective of the DuPage Airport Authority Procurement Policy to secure the best quality commodity or service for the purpose intended at the best price.

Delivery, quality, and service, in addition to price, must be considered in determining the value of goods and services purchased.

These rules are designed to simplify, clarify and update the procurement and contracting process of the DuPage Airport Authority. The rules are meant to encourage effective competition and to ensure that expenditures are carried out in a prudent manner. The rules are also designed to assure a procurement system of quality and integrity.

6-2 **APPLICATION.** These rules shall apply to every group or unit of the DuPage Airport Authority, except as set forth in subsections 6-2-1 through 6-2-4 below:

6-2-1 **Federal Funds or Grants.** When procurement involves the expenditure of federal and/or state grants funds, the Authority shall follow any mandatory requirements of applicable federal and state law and implementing regulations, as stipulated by the language in the actual grant.

6-2-2 **Grants or Cooperative Agreements.** Nothing in these rules shall prevent the Authority from complying with the terms and conditions of any grant, or cooperative agreement, providing that competitive procedures as described in these rules shall be followed whenever possible.

6-2-3 **Professional Services.** Procurement of Professional Services is exempt from using Sealed Bids (IFBs). The preferred method for procuring these services will be using Requests for Proposals (RFP) under the guidelines set forth in these regulations.

6-2-4 **Real Property.** These rules shall not be applicable to the leasing, rental, acquisition or disposition of real property.

6-3 **REVIEW.** The DuPage Airport Authority shall endeavor to review this Policy no less than every five (5) years.

6-4 **TERMS DEFINED IN THESE RULES.**

Award: The acceptance of a Bid or Proposal; the presentation of a purchase agreement or Contract to a bidder.

Best Bid: A Bid which is not necessarily the lowest but, rather, best fits the needs and interests of the Authority when taking into account the responsibility of the bidders.

Best Interest of The Authority: A term granting the DuPage Airport Authority discretion to take action felt to be the most advantageous to the DuPage Airport Authority, including Award of a Contract to the lowest Best Bid or the rejection of all Bids, Proposals and/or offers.

Bid: An offer, as a price, whether for payment or acceptance, given to the DuPage Airport Authority by a bidder on a Contract.

Bid Bond: An insurance agreement in which a third-party surety agrees to be liable to pay a certain amount of money in the event that the bidder's Bid is accepted by the DuPage Airport Authority and the bidder fails to accept the Contract as awarded and approved as to form by the DuPage Airport Authority's attorney.

Brand Name Specification: A specification that cites the brand name, model number or some other designation that identifies a specific product to be offered exclusive of others.

Brand Name or Equal Specification: A specification that cites brand names, model numbers or other identifications as representing quality or performance called for, when inviting bids on comparable items or products of any manufacturer.

Design-Build: A process involving contracting with a single entity to furnish the architectural, engineering, design and related services related to a project where the Executive Director has determined that it is in the Authority's best interests to use the Design-Build method of procurement.

Design-Build Contract: A contract between the Authority and a Design-Build Entity to furnish the architecture, engineering, design and related services as required for a given project, and to furnish the labor, materials and other construction services for the same project.

Design-Build Entity: The entity (whether natural person, partnership, joint venture, corporation, business association, or other legal entity) that proposes to

enter into a Design-Build Contract. This entity must provide appropriately-licensed contracting, architectural, engineering or other applicable services as required by the Request for Proposals.

Design Professional: Any person or entity that offers services under the Illinois Architecture Practice Act of 1989, the Professional Engineering Practice Act of 1989, the Structural Engineering Practice Act of 1989 or the Illinois Professional Land Surveying Act of 1989.

DuPage Airport Authority: The DuPage Airport Authority, including all groups and units.

Competitive Bidding: The submission of prices by individuals or firms for a Contract, privilege or right to supply merchandise or services.

Competition Dollar Threshold: The maximum dollar amount for a requirement that does not require competitive quotes (\$1,999.99).

Confidential Information: Subject to the Freedom of Information Act, any information which is available to an Authority employee only because of the employee's status as a public employee and is not a matter of public knowledge, such as Trade Secrets and test data which may be provided to the DuPage Airport Authority on a confidential basis during the contracting process.

Contract: Any type of Authority agreement, regardless of what it may be called, for the procurement or disposal of supplies, equipment, materials or services.

Discussions: Terminology synonymous or meaning negotiations.

Elected Official:

- (a) members of the DuPage County Board, including its Chairman;
- (b) persons holding an elected office with the County of DuPage; and
- (c) members of the General Assembly whose district is located either wholly or partially within the territory of the Authority.

Emergency Purchase: Emergency purchases made without compliance with the requirements herein are not to be made unless true and justifiable emergencies exist. Emergencies are defined as "Need for parts, supplies, and services required in connection with repairs due to breakdown of major equipment that must be kept running, natural disasters, or other requirements which significantly interfere with the operation of the Airport." If a vendor is called in to provide the product or service, the Manager is responsible to see that the vendor is supervised and that

no unnecessary work is done. As soon as reasonably practicable, the Executive Director is to be notified of all emergency purchases.

Evaluation of Bid: The process of examining a Bid after opening to determine the bidder's responsibility and responsiveness to requirements and to ascertain other characteristics of the Bid that relate to determination of the successful bidder.

Formal Solicitation Process: The process used for soliciting and awarding contracts that exceed \$29,999.99. This process involves formally advertising the requirement pursuant to these regulations, issuing either a formal IFB or RFP and making the resultant Award on a Contract, or rejecting all Bids. The formal solicitation process may also be used on requirements less than \$30,000 if deemed appropriate by the Executive Director.

Invitation For Bids (IFB): All documents, whether attached or incorporated by reference, utilized for soliciting Bids.

Informal Solicitation Process: The process of soliciting Bids or Proposals for requirements less than \$30,000 from prospective contractors without formally advertising or issuing a formal IFB or RFP. Under the informal process, Bids or Proposals may be conveyed and received by letter, facsimile transmission or other means and under conditions different from those required for formal bidding. Competition is still required using this process unless waived in writing by the Executive Director.

Legal Notice: Notice of a proposed purchase as required by law. Depending on the legal requirement, notice may be satisfied by posting an announcement of the purchase in a public place and/or formal advertisement in a newspaper of general circulation, or a combination of these methods.

Lowest Responsible Bidder: The bidder submitting the lowest initial price and who has been determined to be responsible based on past performance, financial capabilities and ability to perform the required work.

Lowest Responsive Bidder: The bidder submitting the lowest and Best Bid and who meets all requirements of the bid invitation.

Mistake in Bid: A miscalculation in composing a Bid resulting in an incorrect price or other term which will affect the bidder's eligibility to be awarded a Contract.

Multi-Step Bidding: Source selection involving two competitive steps, the first constituting a technical Proposal for furnishing the product or service described in the solicitation and the second a submission of prices.

No Bid: A response to an Invitation for Bid stating that the respondent does not wish to submit a Bid.

Non-Responsive Bid: A Bid that does not conform to the requirements of the Invitation for Bids; non-conforming Bid; unresponsive Bid.

Performance Bond: A Contract of guaranty executed subsequent to Award by a successful bidder to protect the Authority from loss due to contractor's inability to complete the Contract as agreed.

Performance Specification: A specification describing the performance characteristics sought in a product or service; a purchase description accenting performance over design; a functional, rather than a generic or physical, specification.

Professional Services: Those services which are essentially intellectual in character and which include analysis, evaluation, prediction, planning or recommendation. Professional Services involve extended analysis, the exercise of discretion and independent judgment in their performance and an advanced, specialized type of knowledge, expertise or training customarily acquired either by a prolonged course of study or equivalent experience in the field. Professional Services include, but are not limited to, services performed by accountants, auditors, analysts, consultants, lawyers, physicians, planners, artists, engineers and architects. Preferred method of procurement of Professional Services is using RFP's.

Protest: A written statement concerning an unresolved disagreement or controversy arising out of the solicitation or Award of a Contract.

Provider Of Goods And Services: All vendors, suppliers, contractors and other service providers to the DuPage Airport Authority, including those providing Professional Services to the DuPage Airport Authority and those seeking to provide goods and services of any kind to the DuPage Airport Authority.

Pre-Qualification of Bidders: The screening of potential suppliers or contractors in which the DuPage Airport Authority considers such factors as financial capability, reputation, management, etc., in order to develop a list of prospective bidders qualified to be sent Invitations to Bid.

Purchase Requisition: That document whereby a Director and/or a Manager requests that a Contract be entered into for a specific need and which may include the description of a request item, delivery schedule, transportation data, criteria evaluation, suggested source of supply and information supplied for the making of a written determination. The Purchase Requisition is required prior to soliciting Bids or Proposals.

Proprietary Information: Subject to the Freedom of Information Act, information or data describing technical processes, mechanisms or operational factors that a business wishes to keep confidential and restricted from public access.

Proposal: An offer made by one (1) party to another as a basis for negotiations for entering into a Contract.

Purchase Order: A DuPage Airport Authority document which formalizes a purchase transaction with a vendor. A Purchase Order contains statements as to quantity, description, price, terms, discounts and date of performance, transportation and other factors pertinent to the purchase and its execution by the vendor. Purchase Orders may be used for goods or services less than \$50,000.00. Acceptance of a Purchase Order by the vendor constitutes a Contract.

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

Request For Proposals (RFP): All documents, whether attached or incorporated by reference, utilized for soliciting competitive Proposals; the RFP procedure permits negotiation of Proposals and prices as distinguished from Competitive Bidding and an Invitation for Bids.

Responsible Bidder or Offeror: A bidder or offeror who, in the DuPage Airport Authority's sole judgment, has the financial capability, technical ability and record of satisfactory past performance in all respects to perform in full the Contract requirements and the integrity and reliability that will assure good faith performance and who meets the standards of Section 6-26-2 of this Code.

Sealed Bid: A Bid which has been submitted in a sealed envelope to prevent its contents from being revealed or known before the deadline for the submission of all Bids. Sealed Bids are associated with IFBs.

Simplified Purchase Procedures: A procedure in which purchases for goods or services less than \$30,000 are obtained by using the informal bid process.

Specifications: Any description of the physical, functional or performance characteristics, or that which sets forth the nature of a supply, service or construction item. A specification includes, as appropriate, requirements for inspecting, testing or preparing a supply, service or construction item for delivery.

Trade Secret: Any aspect of a business or its operation not made available to competitors.

Value Analysis: An organized effort to analyze the function(s) of products, systems Specifications and standards and practices and procedures intended to satisfy the required function(s) in the most economical manner.

Waiver of Bids: A process authorized by the Executive Director to procure items without Competitive Bidding procedures because of unique circumstances related to a particular need or procurement, including emergency provisions.

Sole Source Justification: The written justification which rationalizes or justifies a specified procurement which was accomplished without using full and open competition.

6-5 **ADMINISTRATIVE MATTERS.**

6-5-1 **Executive Director.** All purchasing and Contracts shall be administered by, and shall be under the general supervision of, the Executive Director or person designated by the Executive Director.

6-5-2 **Authority.** The Executive Director or designee shall have the power, responsibility and duty to purchase or Contract for supplies and contractual services needed by the DuPage Airport Authority, in accordance with such rules and regulations as the DuPage Airport Authority's Board of Commissioners shall adopt.

6-5-3 **Purchase Order/Contract Signatory Authorities and Approval Thresholds.** The following personnel in conjunction with the table below are required to be approving officials or the actual authority on the specified procurements:

Board Of Commissioners: The Board of Commissioners shall approve all Contracts that exceed \$29,999.99.

Executive Director: The Executive Director shall approve all Contracts of \$5,000.00 or more but less than \$30,000.00, and shall approve all sole source and emergency requirements. The Executive Director, in his/her absence, may delegate up to \$29,999.99 approval authority to a Director.

Directors: Directors shall approve Contracts of \$2,000.00 up to and including \$4,999.99.

Managers: Managers shall approve Contracts up to and including \$1,999.99.

Procurement Staff: Procurement staff shall approve Contracts up to and including \$500.00.

DuPage Airport Authority Attorney: The DuPage Airport Authority Attorney must review and approve all Contracts in excess of \$29,999.99 as to form.

The following table shall be used to determine Purchase Order/Contract signatory authorities and approval thresholds for the procurements listed herein. Authorities are the approvals necessary prior to soliciting, signing or entering into the agreement or action. Approvals listed will be signatory authorities for the actual contractual instrument.

| <u>AMOUNT</u> | <u>APPROVALS</u> |
|---|------------------------|
| \$500.00 and less | Procurement staff |
| \$1,999.99 and less | Responsible Manager |
| \$2,000 or more but less than \$5,000 | Responsible Director |
| \$5,000 or more but less than \$30,000 | Executive Director |
| More than \$29,999.99 (using Sealed Bids) | Board of Commissioners |

Executive Director shall solicit, sign and issue the notice of Award on all Contracts over \$29,999.99. Notwithstanding anything herein to the contrary, the Executive Director with Resolution Authority (as defined below) can accept a bid immediately if it involves unique subject matter (by way of example, an electric or natural gas supply contract) provided the Board of Commissioners delegates the authority to the Executive Director in a resolution prior to the commencement of the bidding process. The resolution by the Board of Commissioners shall provide for specific instructions regarding the basis and criteria upon which the Executive Director is authorized to accept the bid (collectively the “Resolution Authority”).

- 6-6 **AMENDMENTS, CHANGES AND MODIFICATIONS.** All amendments, changes and modification approvals for a Contract shall follow the same authority as the original document. The responsible authority may delegate their authority in writing (memo or e-mail) to an individual for amendments, changes and modifications for the specific Contract but may not delegate their authority as a blanket authority for all future Contracts. The authorized signatory for the Contract or action listed in the table above may be delegated to a higher authority level; however, under no circumstances shall it be delegated to a lower level without the written approval of the Executive Director.
- 6-7 **CHANGE ORDERS AND CHANGES IN SCOPE OF CONTRACT.** The DuPage Airport Authority may make written changes to the plans, Specifications, scheduling and performance period of a Contract as long as the change is determined to be within the original scope of the Contract. Any change order which exceeds ten percent (10%) of the original cost of the Contract shall be justified in writing by the Manager of the Department responsible for contract administration of the subject Contract and approved by the Executive Director and shall be within the original scope of the Contract prior to issuance of the change order to the contractor.
- 6-8 **COMPETITION EXCEPTIONS.** All purchases and Contracts shall be procured competitively if the aggregate total is more than \$29,999.99, with the exception of purchases or Contracts made using the following exemptions. The applicable exceptions must be cited in the comments section of the Purchase Order or in a formal memo signed by the proper approving authority when applicable and placed in the file for audit purposes.
- (a) Purchases made off of another Contract or agreement written by another state, county, or federal government agency for identical goods or services. The agreement or Contract must have been formally competed within the last five (5) years, including renewal of option periods, by the state, county or federal government agency. This includes GSA Contracts up to the limits specified in the GSA schedule. Use of contracts approved by the government agency or joint purchasing agency shall be permitted but not required.
 - (b) Purchases directly from federal, state, county or other local government units.
 - (c) Purchases made off of Contracts awarded through a joint purchasing alliance of which the DuPage Airport Authority is a member (or becomes a member) where the Contract was formally competed by the alliance or group including, without limitation, DuPage County. Use of contracts approved by the joint purchasing agency or governmental agency participating in the joint purchasing agency (for example, approved by DuPage County) shall be permitted but not required.

- (d) Subscriptions for magazines, books or periodicals.
- (e) Training classes or instructors up to and including \$29,999.99 if the price is determined to be fair and reasonable.
- (f) Purchases for inventory items intended for the purpose of resale.
- (g) Professional Services up to and including \$29,999.99 annually with justification approved by Executive Director.
- (h) Personal service Contracts up to and including \$29,999.99 if price is determined to be fair and reasonable.
- (i) Unusual and compelling urgency - an unusual and compelling urgency precludes full and open competition where the delay in Award of a Contract would result in serious injury, financial or otherwise, to the Authority.
- (j) Other exceptions as approved by the Executive Director and which are in accordance with these policies and procedures.

6-9 **MINIMUM COMPETITION REQUIREMENTS.** These minimum competition requirements apply to the purchase of goods and services which are not exempted from competition:

- (a) Purchases of \$4,999.99 or less do not require competitive bids, however at least three verbal bids are highly encouraged for every purchase.
- (b) Purchases of \$5,000.00 and more up to and including \$29,999.99 require a minimum of three (3) actual bids that are written. The bids may be informally solicited in writing and may be received via fax, e-mail, or hand delivered. If three (3) bids are not received, the file must be documented showing the efforts made to obtain at least three (3). The Executive Director shall approve the Purchase Order and documentation prior to issuance. If the Award is not made to the lowest bidder, then the file must be documented to include the rationale for awarding to other than the lowest bid received.
- (c) The DuPage Airport Authority will solicit all purchases of \$30,000 and more using formal methods and procedures and shall follow the formal procedures unless otherwise waived as per the requirements under this document.

6-10 **CONTRACT DURATION.** The normal procedure for Contracts that are longer than one (1) year in duration will be to write them on a yearly basis with option-to-extend provisions provided that the initial term and all extensions shall not

exceed five (5) years in total. The decision to exercise an option to extend a Contract will be at the sole discretion of the DuPage Airport Authority each year and shall be contingent on annual appropriations of the DuPage Airport Authority and shall consider the criteria set forth in Section 6-12.

If the Board of Commissioners expressly finds it to be in the best interest of the DuPage Airport Authority to do so, the Board of Commissioners may approve a Contract with an initial term of up to five (5) years with annual options to extend the Contract for up to five (5) additional years if the Board of Commissioners deems it in the best interests of the DuPage Airport Authority to do so. The decision to exercise an option to extend such a Contract will be at the sole discretion of the Board of Commissioners in each option period and shall be contingent on annual appropriations of the DuPage Airport Authority. In deciding whether to extend such a Contract beyond the initial term, the Board of Commissioners shall consider at a minimum the criteria set forth in Section 6-12.

6-11 **AUDIT AND RECORD RETENTION.** Contractors shall keep full and detailed accounts and exercise such controls for proper financial management. The DuPage Airport Authority, its agents and accountants shall be afforded access to Contractors' records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to its contract with the DuPage Airport Authority and the work performed thereunder. Contractors shall preserve these records for a period of three (3) years after final payment, or for such longer period as required by law.

6-12 **CONTRACT EXTENSION.** In deciding whether to renew or extend a Contract beyond its initial term, the following criteria shall be considered prior to exercising the option to extend or entering into a renewal:

- (a) The need to extend the Contract for goods and services is unique and it is in the best interest of the Authority to do so.
- (b) The Contractor has performed satisfactorily under the original Contract term.
- (c) The services are still required under the Contract.
- (d) The current market conditions have not changed from the original Contract, therefore the contractor's prices are still considered fair and reasonable.
- (e) The scope of services has not significantly changed from the original Contract. (If the scope of services is significantly changed then re-bid of the Contract is recommended).
- (f) The Contractor has fully complied with all political contribution disclosure requirements under this Chapter.

Contractors should be notified in writing of the DuPage Airport Authority's intent to exercise or decline to exercise an option at least thirty (30) calendar days before the expiration date of the current Contract term.

6-13 **BIDDING OPTION PERIODS.** The DuPage Airport Authority may require contractors to bid option periods in solicitations. If option periods are bid in solicitations, then they should be considered to some extent when evaluating the overall low bidder prior to making an Award. If options periods are bid in solicitations, contractors will not be allowed to increase their prices when an option period is entered into unless there have been drastic economic changes that could not be realistically considered by the contractor when they submitted their original Bid. In such cases, the Contractor must submit proper justification of their proposed increase prior to entering into the option period. The Executive Director will then determine if the Contractor's request is reasonable or if it is in the best interest of the DuPage Airport Authority to re-bid the requirement.

6-14 **CONFLICTS OF INTEREST.** In addition to the applicable DuPage Airport Authority Ethics Ordinance and/or prohibitions listed in the DuPage Airport Authority Personnel and/or Policies Manual, Contracts or Purchase Orders, other than Design-Build Contracts, will not be awarded to consultants, engineers, architects or other professionals for Contract administration services if they were paid for actual design or specification preparation of the subject project by the DuPage Airport Authority without written consent or approval from the Executive Director; nor is a Contractor or any affiliated firm of that Contractor allowed to bid on Contracts in which they are being paid for Contract oversight without written consent or approval from the Executive Director. In no event shall the consultant or Contractor have full authority for approving change orders or obligating the DuPage Airport Authority financially on the Contract for which they are providing oversight.

6-15 **POLITICAL CONTRIBUTION DISCLOSURE.**

6-15-1 **Disclosure Required.** At the time any Bid is submitted, or upon request by the DuPage Airport Authority, Providers of Goods and Services to the DuPage Airport Authority must disclose, on a form available from the DuPage Airport Authority (a "Statement of Political Contributions" attached hereto at Appendix 6-A), all contributions made to any Elected Official, as that term is previously defined herein, that exceed \$150.00 total during the twenty-four (24) months immediately preceding this disclosure. In addition to the name of the Elected Official, the provider must disclose on the Statement of Political Contributions, the amount(s) or value(s), if other than cash, of any contribution(s), the date(s) of any contribution(s) and the form of any contribution made during the twenty-four (24) months preceding this disclosure.

6-15-2 **Exception.** This Section 6-15 does not apply to any Provider of Goods and Services who has provided goods or services during the prior twelve (12) month period valued at \$9,999.99 or less or to any Provider of Goods and Services who is submitting a Bid of \$9,999.99 or less for a Contract.

6-15-3 **Persons Required to Disclose.** When the provider of goods or services is a business entity, the disclosures required by subsection 6-15-1 must be made for those contributions made in the name of the business and a separate disclosure must be made for each of the following:

- (a) Each individual owning twenty-five percent (25%) or more of the stock of a corporation, regardless of the type of corporation;
- (b) Each individual listed as the president, vice-president, treasurer or secretary of the corporation, regardless of the type of corporation;
- (c) Each individual member of a partnership, regardless of the type of partnership;
- (d) Each individual member and manager of a limited liability company; and
- (e) Each individual owner of a sole proprietorship.

6-15-4 **Additional Person.** When any person is required to make disclosures pursuant to this Section 6-15, that person must disclose all information required in this Section for themselves as well as for each of the following:

- (a) His or her spouse and dependent children;
- (b) Every entity in which the person or the person's spouse or dependent children own more than five percent (5%); and
- (c) Every association or organization in which the person or the person's spouse or dependent children are listed as an officer.

6-15-5 **Publication by Airport Authority.** Biannually, the DuPage Airport Authority will release, for public inspection, a list detailing the contributions reported to the DuPage Airport Authority by those Providers of Goods and Services who were awarded Contracts by or received payments from the DuPage Airport Authority in excess of \$29,999.99 during the twelve months prior to the issuance of said list.

6-15-6 **Contents of Disclosure Not Considered.** The contents of the Statement of Political Contributions submitted under this Section 6-15 will not be considered in any decisions made by any commissioner,

employee or representative of the DuPage Airport Authority, except that any failure to comply with this Section 6-14 will result in the revocation of an existing Contract or Purchase Order or the rejection of a Bid or Proposal submitted to the DuPage Airport Authority, unless the DuPage Airport Authority Board of Commissioners votes to waive the requirements of this Section 6-15, in accordance with subsection 6-15-9.

6-15-7 **Contracts Let by State.** Inasmuch as the State of Illinois' ethics policies are currently not as stringent as this Policy, any Contracts let by the State of Illinois are exempt from this Section 6-15 because the DuPage Airport Authority does not control who is awarded a particular State of Illinois Contract.

6-15-8 **Exemptions.** This Section 6-15 shall not apply to Contracts awarded prior to September 1, 2005 or to compensation paid to someone in his or her role as employee or Commissioner of the DuPage Airport Authority. However, all Providers of Goods and Services who receive payments pursuant to oral agreements before or after September 1, 2005 shall be subject to the provisions of this Section 6-15 effective September 1, 2005.

6-15-9 **Non-Compliance.** It is the DuPage Airport Authority's policy that this Section 6-15 on Political Contribution Disclosure be adhered to in all respects. In the case of non-compliance with Section 6-15, the Airport Authority reserves the right to make an Award to a Provider of Goods and Services despite said non-compliance. However, any decision to make such an Award despite a Provider's non-compliance with Section 6-15 must be made at a public meeting after an individual voice-vote by a majority of the Board of Commissioners of the DuPage Airport Authority present and must be accompanied by a specific finding by the Board that the named provider did not comply with Section 6-15 but that such provider is being awarded the Contract notwithstanding said non-compliance, and the reason therefor.

6-16 **EMPLOYEE-OWNED BUSINESS.** The DuPage Airport Authority shall not contract for goods or services for any department if the Contract is with an employee of the DuPage Airport Authority, with the exception of employment Contracts.

Furthermore, contracting for goods or services with a commissioner or a company which is owned in whole or part by an employee or commissioner, or a member of his/her immediate family, or a company in which an employee or commissioner or a member of his/her immediate family has a financial interest (as defined below), is permitted providing a majority of the Board of Commissioners of the DuPage Airport Authority present at a public meeting votes to permit same and a disclosure of the relationship is read aloud prior to the vote being taken.

The Executive Director shall be notified immediately in writing of such an ownership interest or financial interest.

DEFINITIONS: For the purpose of this provision, “owned in part” means having an ownership interest of more than five percent (5%) of the business. “Financial interest” means any interest in the business by means of a loan or other evidence of indebtedness, in excess of five percent (5%) of said business’s outstanding indebtedness. “Immediate family” is defined as a spouse, parent, dependent child, or sibling.

6-17 **ESTIMATED MAGNITUDES FOR SOLICITATIONS FOR CONSTRUCTION.** Invitations for Bids (IFBs) and all associated notice to bidders or advertisements for construction projects shall contain an estimated project magnitude in order to inform potential Bidders what the Authority anticipates the project to cost, without releasing the actual project estimate. The magnitude is for informational purposes only and should only be used by bidders as a guide to determine if they have the necessary bonding capacity and capabilities to perform a construction project within this magnitude. The following magnitude ranges shall be used for this purpose:

- \$50,000 up to and including \$100,000
- \$100,000.01 up to and including \$200,000
- \$200,000.01 up to and including \$300,000
- \$300,000.01 up to and including \$400,000
- \$400,000.01 up to and including \$500,000
- \$500,000.01 up to and including \$750,000
- \$750,000.01 up to and including \$1,000,000
- \$1,000,000.01 up to and including \$1,500,000
- \$1,500,000.01 up to and including \$2,500,000
- \$2,500,000.01 up to and including \$5,000,000
- \$5,000,000.01 up to and including \$7,500,000
- \$7,500,000.01 up to an including \$10,000,000

\$10,000,000.01 up to and including \$15,000,000.

6-18 **METHODS OF SOURCE SELECTION - COMPETITIVE SEALED BIDDING - (INVITATION FOR BIDS) FOR EQUIPMENT, SUPPLIES, MATERIALS, SERVICES AND CONSTRUCTION.**

- 6-18-1 **Invitation for Bids (IFBs).** The statement of work or Specifications of the Invitation for Bids is critical for the success of the procurement since the Award using sealed bidding must be made without negotiations, unless only one Bid was received. Basic considerations include the contractual terms and conditions which must be written to protect the interest of the DuPage Airport Authority; openness of Specifications; requirements for transportation and delivery; and instructions as to how the bidder is to submit the Proposal. A solicitation should seek full and open competition for all purchases and provide fair and equal opportunity for all qualified persons or firms to compete. Invitation for Bids (IFBs) is the preferred method of procurement for the DuPage Airport Authority.
- 6-18-2 **Invitation for Bids - Content.** The Invitation for Bids shall include the following: (a) Instructions and information to bidders concerning the Bid submission requirements, including the time and closing date, the address of the office to which Bids are to be delivered; (b) The project description, basis of Award, delivery or performance schedule and inspection and acceptance requirements; (c) The Contract terms and conditions, including warranty and bonding or security requirements, as applicable.
- 6-18-3 **Incorporation by Reference.** The Invitation for Bids may incorporate documents by reference provided that the Invitation specifies where such documents may be obtained.
- 6-18-4 **Bidder Submissions - Bid Form.** The Invitation for Bids shall provide a form which shall include space(s) in which the Bid price(s) shall be inserted and which the Bidder shall sign and submit along with all other necessary submissions.
- 6-18-5 **Bidder Submissions - Statement of Political Contributions Form.** The Invitation for Bids shall provide a Statement of Political Contributions form which the bidder shall complete and submit along with all other necessary submissions.
- 6-18-6 **Multiple or Alternate Bids.** The solicitation shall prohibit multiple or alternate Bids unless such Bids are specifically provided for in the Invitation for Bids. When prohibited, the multiple or alternate Bids shall be rejected, and a clearly indicated base Bid will be considered

for Award as though it were the only Bid or offer submitted by the bidder.

- 6-18-7 **Specifications.** Whenever feasible, the DuPage Airport Authority shall issue product, supply and service Specifications which are not unduly restrictive. This may include the utilization of life cycle costing and/or Value Analysis in determining the Lowest Responsible Bidder, provided the Specifications indicate the procedure and evaluative factors to be used. Performance Specifications may be used provided they include evaluative criteria to be used in making the Award.
- 6-18-8 **Solicitation Time.** Except as provided for under this Chapter and declared emergencies, the minimum time for solicitation of Bids shall be twenty-one (21) calendar days from the date the advertisement is posted. When special requirements exist, the Executive Director may lengthen or shorten the Bid time, but in no case shall the time cycle be shortened if it will reduce competition. Complicated procurements may have a time period that is longer than the standard twenty-one (21) calendar days. The DuPage Airport Authority will document solicitation times of less than twenty-one (21) days as to why a reduced Bid period was required. Requests for Proposals (RFPs) for services must allow a minimum of thirty (30) calendar days for response, unless approved by the Executive Director.
- 6-18-9 **Receipt of Bids.** Upon receipt, each Bid shall be time-stamped by machine or by hand and shall be stored in a secure place until Bid opening time. Bids shall not be opened upon receipt, with the exception of Bids that must be opened in order to identify those bids which cannot be visibly identified by the information on the envelope. If Bids are opened for identification purposes only, they will be opened and resealed in the presence of witness (s) and documented as such on the front of the envelope.
- 6-18-10 **Opening & Recording of Bids.** The Executive Director or designee, in the presence of one (1) or more witnesses, shall open Bids publicly at the time and place designated in the Invitation for Bids. The name of each bidder, the Bid price(s), and other information as is deemed appropriate by the Executive Director shall be read aloud or otherwise be made available. The record shall be available for public inspection and distribution. Except for those items identified as Proprietary Information, Trade Secrets or other information protected under the Freedom of Information Act, all data regarding any particular Bid becomes public information immediately after a decision or Award relating to that Bid has been made.

6-18-11 **One Bid Received.** If only one responsive bid is received in response to the Invitation for Bids, the Authority may extend the bid period by not more than 30 days, may make a second Invitation for Bids with the notice for same clearly noting that only one Bid was received in response to the first invitation, or the Executive Director may accept the bid if the Executive Director determines the bid complies with the requirement of this Chapter, is fair and reasonable and the bid is within the amount budgeted in the Authority's Budget and Appropriations Ordinance. If the Executive Director extends the bid period and only one bid is received by the end of the extended bid period, the Authority may Award the contract to the single contractor if the responsive Bid complies the requirements of this Chapter and the Executive Director finds that the price(s) submitted are fair and reasonable and the bid is within the amount budgeted in the Authority's Budget and Appropriations Ordinance. In the case of a second Invitation for Bids, the price received from the first invitation shall not be released to the public prior to the second Invitation for Bids. If after a second Invitation only one Bid is received again, an Award may be made to the single contractor if the responsive Bid complies with requirements of this Chapter, and the Executive Director finds that the price(s) submitted are fair and reasonable. If the Executive Director determines that the price of the one Bid is not fair and reasonable, negotiations may be entered into with the lone bidder, and an Award may be made to the lone bidder. Otherwise, the Bid may be rejected or the proposed procurement may be cancelled.

If there is inadequate time for a second Invitation for Bids, the resolution awarding said Contract to the lone bidder shall state such and the foregoing requirements regarding the receipt of one Bid after a second solicitation shall be adhered to.

6-18-12 **Extension of Time for Bid or Proposal Acceptance.** After opening of Bids, the Executive Director may request low bidder(s) to extend the time during which the DuPage Airport Authority may accept their bids, provided that no other change is permitted. The reasons for requesting such extensions shall be documented.

6-18-13 **Evaluation.** All products or services shall be evaluated against the requirements stated in the DuPage Airport Authority's solicitation. In addition to price, the following factors may be considered in evaluating any Bid response: delivery date after receipt of order, cash discounts, warranties (type/length), future availability, results of product testing, local service, cost of maintenance agreements, future trade-in value or availability of re-purchase agreement, availability of training courses, financial terms, space limitations, esthetics, adaptability to environment, cost of operation (if any), safety and health features relating to regulatory codes or requirements. The

contents of the Statement of Political Contributions shall not be considered in evaluating any bid response. However, the failure to comply with said requirement as contained herein may result in the rejection of a Bid.

- 6-18-14 **Bid Evaluation - Product Acceptability.** The Invitation for Bids may require the submission of Bid samples, descriptive literature, technical data or other material necessary to determine product acceptability. The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine whether a bidder's offering will meet the DuPage Airport Authority's needs as set forth in the Invitation. Any bidder's offering which does not meet acceptability requirements will be rejected as non-responsive.
- 6-18-15 **Award Using Sealed Bidding.** The Contract shall be awarded to the Lowest Responsive and Responsible Bidder whose Bid meets the requirements and the criterion set forth in the Invitation for Bids, under this Chapter, and is determined to be in the best interest of the DuPage Airport Authority. Negotiations are not allowed when using sealed bidding unless only one Bid was received. The Executive Director may determine to make whole or partial Awards or may reject any or all Bids, as determined by the Executive Director to be in the best interests of the DuPage Airport Authority. If insufficient funds are available to award a Contract, the solicitation may be canceled or the Executive Director may choose to re-scope the project and re-solicit Bids, as may be determined to be in the best interest of the DuPage Airport Authority.
- 6-18-16 **Low Tie Bids.** Tie Bids are low responsive Bids from Responsible Bidders that are identical in price and which meet all the requirements and criteria set forth in the Invitation for Bids. At the discretion of the Executive Director, Award shall be made, if possible, by methods including split orders and rotations or, if not possible to make split or rotational Awards, then drawing of lots or flipping of a coin will be used to determine the Award.
- 6-18-17 **Telephone Bids.** Telephone Bids will not be accepted in formal solicitations, except as provided for herein, unless the Executive Director shall make written determination that market conditions are of such a nature that it is in the Best Interest of the Authority to solicit telephone Bids, such as the purchase of petroleum fuels on a daily basis, under changing market conditions or under solicitations during a declared emergency.

- 6-18-18 **Electronic and Facsimile Bids.** Bids submitted by facsimile transmission to the DuPage Airport Authority's Office prior to the Bid opening may be accepted under the following conditions: 1) the facsimile Bid must refer specifically to the applicable Invitation for Bids; 2) it must set forth the items, quantities, prices and deliveries offered; and 3) it shall state that the Bid complies with the terms and conditions of the Invitation for Bids and is being confirmed by submission of the properly executed Bid documents and Statement of Political Contributions. Facsimile transmissions to the DuPage Airport Authority's Office will not be accepted in the formal competitive Sealed Bid process unless the Invitation for Bids specifically allows them.
- 6-18-19 **Modification or Withdrawal of Bids.** Bids may be modified or withdrawn by written correspondence or facsimile notice to the DuPage Airport Authority's Office prior to the time set for Bid opening.
- 6-18-20 **Withdrawal of Bid Prior to Bid Opening.** The bidder, prior to the specified Bid opening time and date, may withdraw any Bid if the bidder's representative appears at the DuPage Airport Authority's office or if the Executive Director receives a written request for withdrawal.
- 6-18-21 **Withdrawal of Bid after Opening but Prior to Award.** No Bid may be withdrawn or Contract negated unless the bidder or Contractor can establish that the Bid or Contract contains mistakes despite the exercise by the bidder or Contractor of reasonable care. The test of reasonable care shall be that 1) the mistake relates to a material feature of the Contract; 2) the mistake occurred despite the exercise of reasonable care; and 3) withdrawal is deemed by the Executive Director to be in the best interest of the DuPage Airport Authority.
- 6-18-22 **Records.** All documents relating to the modification or withdrawal of Bids shall be made part of the appropriate procurement file.
- 6-18-23 **Minor Informalities/Irregularities in Bids.** A minor informality or irregularity is one that is merely a matter of form and not of substance. It also pertains to some immaterial defect in a Bid or variation of a Bid from the exact requirements of the invitation that can be corrected or waived without being prejudicial to other bidders. The defect or variation is considered immaterial when the effect on price, quantity, quality or delivery is negligible when contrasted with the total cost or scope of the services being acquired. If the Executive Director determines that the Bid submitted contains a minor informality or irregularity, then he/she either shall give the bidder an opportunity to

cure any deficiency resulting from a minor informality or irregularity in a Bid or waive the deficiency, whichever is to the advantage of the Authority. In no event will the bidder be allowed to change the Bid amount. Examples of minor informalities or irregularities include but are not limited to the following:

- (a) Bidder fails to return the number of copies of signed Bids required by the Invitation for Bids.
- (b) Bidder fails to sign the Bid, but only if the unsigned Bid is accompanied by other material evidence, which indicates the bidder's intention to be bound by the unsigned Bid. (such as Bid Bond, or signed cover letter which references the bid number or title and amount of Bid)
- (c) Bidder fails to acknowledge an amendment - this may be considered a minor informality only if the amendment, which was not acknowledged, is insignificant and involves only a matter of form or has either no effect or merely a negligible effect on price, quantity, quality, or delivery of the item or services bid upon.

6-18-24 **Late Bids.** Any Bid withdrawal or modification to Bids received after time and date set for opening shall be considered late and shall be rejected and returned unopened to the bidder, except as provided herein. All sealed competitive Bids shall be opened as soon as possible after the time designated by the Invitation. Bids received after the Bid opening time shall not be opened but shall be rejected as a late Bid. The responsibility to ensure that Bid solicitations are obtained and that Bids are received prior to the opening date and time rests with the vendor. The Executive Director may permit the following exceptions:

- (a) In the event of a public labor unrest (strike, work slowdown, etc.), which may affect mail delivery, the Executive Director may develop and issue emergency procedures.
- (b) There is conclusive evidence that the Bid was submitted to the office designated in the IFB or RFP, on time and was mishandled by the DuPage Airport Authority's personnel responsible for handling/receiving Bids (*i.e.*, lost or misplaced).
- (c) It was the only Bid received.
- (d) The Executive Director shall rule any other situation, which is beyond the control of both the DuPage Airport Authority and the vendor, as to the acceptability of the Bid.

- 6-18-25 **Public Notice - Advertisement.** Invitations for Bids or notices of the availability of Invitations for Bids shall be posted on the DuPage Airport Authority's website, mailed, faxed or otherwise furnished to a sufficient number of prospective bidders to secure adequate competition. For formal Bids in excess of \$29,999.99, public notice shall be published at least once in a newspaper of general circulation and/or in as many trade publications, secondary newspapers and the DuPage Airport Authority's Web Page to assure competition is maximized, at least fourteen (14) calendar days prior to the date for Bid opening, except as outlined herein.
- 6-18-26 **Waiver of Public Notice - Advertisement.** The Executive Director may authorize the waiver of public notice for requirements in excess of \$29,999.99 upon written determination that circumstances call for quick procurement action. Supplies or equipment may be needed promptly for backup to insure against downtime; a significant price increase on a needed item may be imminent; the scope of an ongoing task may be unexpectedly expanded. In these kinds of situations the Executive Director will make a special effort to obtain written competition or Sealed Bids but may waive the publication of notice in the newspaper.
- 6-18-27 **Public Availability.** A copy of the Invitation for Bids shall be made available for public inspection at the DuPage Airport Authority's Office or via the DuPage Airport Authority's website.
- 6-18-28 **Pre-Bid Conferences.** Pre-Bid conferences may be conducted for the purpose of explaining the procurement requirements. They shall be announced to all prospective bidders known to have received the Invitation for Bids. The conference should be held long enough after the Invitation has been issued to allow bidders to become familiar with it, but with adequate time before Bid opening to allow consideration of the conference results in preparing the Bid. The Pre-Bid conferences may be mandatory if determined necessary to ensure familiarity of the project prior to bidding by all bidders. Nothing stated at such conference shall change the Invitation for Bids unless the change is made by written amendment.
- 6-18-29 **Addenda/Amendments to Invitations for Bids.** Addenda/Amendments to Invitations for Bids shall be identified as such and shall require that the bidder acknowledge receipt of all amendments issued with their Bid or Proposal. The amendment shall reference the portions of the Invitation it amends. Amendments shall be sent to all prospective bidders known to have received an Invitation for Bids, as well as made available on the DuPage Airport Authority's

website. Amendments shall be distributed within a reasonable time to allow prospective Bidders to consider them in preparing their Bids. If the time set for Bid opening will not permit such preparation, to the extent possible the Bid preparation time shall be increased in the amendment or, if necessary, by telephone, and confirmed in the amendment. Questions received by prospective bidders concerning the Invitation for Bid, both technical and contractual in nature, will be answered in the form of an amendment to allow all potential bidders to share the same information.

- 6-18-30 **Distribution of Addenda/Amendments.** Addenda/Amendments to Invitations for Bids shall be sent to all prospective bidders known to have received an Invitation for Bids and posted on the DuPage Airport Authority's website for electronic distribution (downloading). Regardless of the distribution, it is still the overall responsibility of the Bidder to ensure they have received all previously issued Addenda/Amendments prior to submission of their Bid.
- 6-18-31 **Confidential Data.** The Executive Director shall examine all Bids to determine the validity of any requests for non-disclosure of Trade Secrets or other proprietary data identified in writing. The bidder, prior to the Bid opening under separate cover, shall submit such requests. If the parties do not agree as to the disclosure of data, the Executive Director shall inform the bidder in writing what portions of the Bid will be disclosed and that, unless the bidder protests in accordance with Section 6-27 of these rules, the Bids will be so disclosed.
- 6-18-32 **Mistakes in Bids - Confirmation of Bid.** When it appears from a review of the Bid that a mistake has been made, the Executive Director shall be responsible for requesting the bidder to confirm their Bid in writing. Situations in which the confirmation should be requested include obvious, apparent errors on the face of the Bid or a Bid unreasonably lower than the other Bids submitted. If the bidder alleges mistake, the Bid may be withdrawn only if the provisions of this Chapter are followed. Bidders may request in writing to the Executive Director that they be allowed to correct a mistake in their Bid; however, the mistake has to be apparent and substantiated by evidence provided by the bidder that the mistake was valid. The Executive Director will evaluate the request and make a determination in writing as to whether the correction of the mistake is allowed. Further, bidders will not be allowed to correct other than apparent typographical errors if their correction would displace another bidder.
- 6-18-33 **Mistakes Where Intended Correct Bid is Evident.** If the mistake and the intended correct Bid are clearly evident to the Executive Director on the face of the Bid document, the Bid shall be corrected by

the bidder to the intended correct Bid and may not be withdrawn. Examples include typographical errors, errors in extending unit prices and transposition errors.

- 6-18-34 **Mistakes Where Intended Correct Bid Is Not Evident to the Director.** A bidder may be permitted to withdraw a Bid if the bidder submits proof of evidentiary value in accordance with provisions of this Chapter.
- 6-18-35 **Mistakes Discovered Before Opening.** A bidder may correct mistakes discovered before Bid opening by withdrawing or correcting the Bid as outlined in this Chapter.
- 6-18-36 **Determination Required.** Any decision to permit or deny correction or withdrawal of a Bid under this Section shall be supported by a written determination by the Executive Director.
- 6-18-37 **Mistakes After Award of Contract.** When a mistake in a Contractor's Bid is not discovered until after award of a Contract, the mistake may be corrected by Contract change order if correcting the mistake would be favorable to the Authority without changing the Specifications. If the mistake is not in the favor of the DuPage Airport Authority, the Executive Director will have the following options:
- (a) To rescind the Contract via termination;
 - (b) Deny the Contractor's request to correct the mistake; or
 - (c) To reform the Contract by the following actions:
 - (i) Delete the item (s) involved in the mistake; and/or
 - (ii) To increase the price of the Contract by allowing the correction of the mistake, as long as the correction or increase in price does not exceed the price of the next lowest bidder. Note: Partial corrections will not be allowed in order to stay below the next lowest bidder's price.

In all cases, the burden of proof rests with the Contractor. The alleged mistake must be proven by clear and convincing evidence that a mistake was indeed made. The Executive Director shall request the contractor to support the alleged mistake by submission of written statements and pertinent evidence such as, but not limited to: Contractor's file copy of Bid, Contractor's original worksheets, including supporting data used to prepare Bid, subcontractor or

supplier quotes and any other evidence that will serve to establish the mistake, the manner in which the mistake occurred and the Bid actually intended. If there is not clear and convincing evidence to support the alleged mistake, then no action will be taken.

- 6-18-38 **Waiver of Competition.** The Executive Director may elect to waive the competitive bidding process for services/products which total less than \$30,000 in the aggregate under certain conditions including: (a) a needed product or service which is available from only one supplier (sole source), (b) a particular product is wanted for experiment or trial, (c) additional products are required to complete an ongoing task, (d) the amount of the purchase is too small to justify the expense of soliciting quotations, (e) a purchase is made from another unit of government, or (f) the purchase of a used item is advantageous and the item is available only on short notice and subject to prior sale.

The Board of Commissioners may elect to waive the competitive bidding process for services/products which total more than \$29,999.99 under the conditions cited above except for condition (d). The DuPage Airport Authority shall require competition wherever practicable, and, except for small purchases, the basis and reasons for each waiver shall be documented as public record.

- 6-18-39 **Preference for Qualified Local Bidders.** To the extent not prohibited by federal or state statute, FAA regulation or other applicable statute, regulation or law and notwithstanding any provisions of this Chapter 6 of the DuPage Airport Authority Code to the contrary, it shall be the policy of the Authority to procure goods and services from qualified local bidders to the greatest extent possible. However, the Board of Commissioners may in its discretion waive the preference for qualified local bidders. The preference for qualified local bidders shall not apply to contracts or work paid in whole or in part with funds received from the State of Illinois or any agency of the federal government. The preference for qualified local bidders in this section shall apply only to projects let by Invitation for Bids.

(a) **Definition.** To be considered a qualified local bidder, a bidder must at a minimum meet each of the following criteria:

1. The bidder must maintain a business office within DuPage County, Illinois;
2. The bidder must employ year-round full-time staff at its office maintained within DuPage County, Illinois; and

3. The Bidder must be current with all applicable taxes or other amounts due to the Authority.

(b) **Notice Of Intent To Bid Lower Than Low Bid.** If the lowest responsive, responsible bidder is not a qualified local bidder and if a qualified local bidder has submitted a Bid which is within five percent (5%) of the lowest responsive, responsible bidder for an item or Bid, the qualified local bidder shall be given written notice to that effect and may, within five (5) calendar days from the date of such notice, provide written confirmation to the Authority that it will bid lower than the Bid price of the lowest responsive, responsible bidder and shall, within the same five (5) calendar days submit its substitute Bid. If a qualified local bidder fails to provide such written confirmation and substitute Bid within the time allowed, its Bid shall be considered as originally submitted.

(c) **Multiple Qualified Local Bidders.** If more than one qualified local bidder is within five percent (5%) of the lowest responsive, responsible bidder, only the qualified local bidder submitting the lowest Bid shall be given the opportunity to bid lower than the Bid of the lowest responsive, responsible bidder. The qualified local bidder shall, where the Bid is an aggregate of separate price components, reduce the price of each separate component of its aggregate Bid by the same percentage that was used to bid lower than the Bid of the lowest responsive, responsible bidder.

(d) **Rejection of Bids.** The Authority may reject any and all Bids and award the Contract to a bidder other than the lowest responsive, responsible bidder or a qualified local bidder who bids lower than the lowest responsive Bid upon the determination of the appropriate person/Board as set forth in subsection 6-5-3 hereof that it is in the Authority's best interests to do so.

(e) **Certification.** A bidder shall certify in its Bid whether it is a qualified local bidder under this Code.

6-18-40 **Sole Source Procurement.** Sole source purchase requirements may arise from a number of circumstances including, but not limited to:

(a) The purchase of technical equipment for which there is no competitive product and which is available only from one supplier.

(b) The purchase of a component or replacement part for which there is no commercially available product and which can be obtained only from the manufacturer.

- (c) The purchase of an item where compatibility is the overriding consideration.
- (d) The purchase of a used item which becomes immediately available and is subject to prior sale.
- (e) The purchase of a particular product for trial or testing.
- (f) The Executive Director, in writing, determines use of a sole source to be in the Best Interest of the Authority based on unusual or compelling urgency.
- (g) The use of other than OEM parts would void a still valid warranty.
- (h) Sole source refers to the supplier, not a product or service. Thus, the ability to meet a delivery date or to provide on-call repairs can create a sole source that is a single supplier condition. Justification for a sole source purchase depends upon a needed item being available from only a single supplier under the prevailing conditions. If the item may be obtained from more than one source, price competition shall be solicited.

6-18-41 **Written Justification.** A written justification approved by the Executive Director and any other approving authority, depending on total value of the procurement, shall be included in the file for all procurements that exceed the competition threshold of \$1,999.99 that were awarded as “Sole Source.” This justification shall completely explain the rationale used in determining “sole source” as well as the determination that the awarded price is “fair and reasonable” using an element of price analysis justifying the total cost.

6-18-42 **Purchase of Items Separately from Construction Contract.** The Executive Director and using agency are authorized to determine whether a supply item or group of supply items shall be included as a part of, or procured separately from, any Contract for construction.

6-18-43 **Procurement of Services/Construction by Purchase Order.** If the Executive Director deems it to be in the Best Interest of the Authority, services or construction which are simple and which typically involve no more than one or two trades may be procured through the use of a Purchase Order approved by the Executive Director, subject to the rules governing that method of procurement. The normal rule for allowing such services to be ordered under a Purchase Order is as follows:

- (a) Less than sixty (60) days' performance with a defined completion date;
- (b) Less than \$30,000 and competition was obtained to determine fair price;
- (c) Vendor or contractor signs the Purchase Order acknowledging full acceptance of the terms; and
- (d) Vendor or contractor completes and submits a Statement of Political Contributions along with the signed Purchase Order.

6-18-44 **Disposition of Bid Security.** Bid security, if any, shall be returned to the bidder when withdrawal of the Bid is permitted, the Contract is awarded to another firm or Invitation for Bids are canceled after opening. Normally, Bid securities in the form of bonds will not be returned to unsuccessful Bidders unless requested since they normally expire after Contract is awarded and become invalid automatically.

6-18-45 **Disadvantaged, Minority or Small Business Enterprises.** No provision is made in these rules for preferences or set-asides for small, minority or women-owned businesses. It is, however, the policy of the DuPage Airport Authority to make every effort to solicit and encourage small, minority or women-owned business participation for the DuPage Airport Authority's purchasing or Contracts.

6-18-46 **Equal Opportunity.** The DuPage Airport Authority shall be responsible for ensuring the procurement of products, commodities and services are in a manner that affords all responsible businesses a fair and equal opportunity to compete.

6-18-47 **Adequate Competition.** It is the responsibility of the DuPage Airport Authority's staff to ensure that an adequate selection of bidders is solicited for every requirement for achieving optimum competition. This responsibility includes selecting other advertising methods or vehicles when sources may be limited.

6-19 **METHOD OF SOURCE SELECTION - REQUEST FOR PROPOSALS (RFP) (FORMAL).**

6-19-1 **Definition.** Request For Proposals (RFP) is an objective method of contracting for goods or services whereby Proposals are solicited from qualified contractors, following submission of which changes in Proposals and prices are allowed, and the offer deemed by the DuPage Airport Authority to be most advantageous in terms of criteria as

designated in the RFP, as determined by the Executive Director to be in the Best Interest of the Authority, may then be accepted. An RFP should not be used when the service or equipment to be contracted is standard, routine or common “off the shelf” type items or if there is an industry standard associated with the service or commodity to be contracted. A RFP is a very time-consuming and costly method of procurement that should only be used when sealed bidding is not appropriate.

6-19-2 **When RFPs are Practicable.** Factors to be considered in determining whether RFPs are practicable include:

- (a) Estimated Contract value is more than \$50,000.
- (b) Requirement is highly technical, unusual, is not standard “off the shelf” item, or there is not any clear standards or Specifications available to use in the solicitation.
- (c) If the Contract needs to be other than fixed-price type.
- (d) If it may be necessary to conduct oral or written Discussions with offerors concerning technical and price aspects of their Proposals.
- (e) If it may be necessary to afford offerors the opportunity to revise their Proposals.
- (f) If it may be necessary to base Award on a comparative evaluation as stated in the RFP of differing price, quality and contractual factors in order to determine the most advantageous offering to the DuPage Airport Authority.
- (g) If the primary consideration(s) in determining Award may be factors other than price(s).
- (h) The Authority is procuring a Design-Build Contract, which it is hereby expressly authorized to do. In the event the Authority procures a Design-Build Contract, the Authority shall use a Design Professional to prepare bridging/scoping documents and performance criteria. Any prohibition against the Contractor’s providing both design services and contract administration and/or oversight shall not apply provided, however, that any person or entity who prepares scoping or bridging documents for a Design-Build project shall be prohibited from submitting a proposal for that Design-Build project.

- 6-19-3 **When RFPs are Advantageous.** A determination will be made to use competitive sealed Proposals if it is determined to be advantageous to the Authority. Factors to be considered in determining whether RFPs are advantageous include:
- (a) If prior procurements indicate that competitive sealed Proposals may result in more beneficial Contracts for the Authority.
 - (b) The requirement is highly technical or complex in nature and would be more advantageous to the DuPage Airport Authority to use the RFP method of source selection.
 - (c) If the factors listed in this Section are more desirable than necessary in conducting a procurement, then such factors may be used to support a determination that RFPs are advantageous.
- 6-19-4 **Determinations.** Before a solicitation is issued by RFP, the Executive Director shall determine in writing that competitive sealed bidding is either not practicable or not advantageous to the Authority. The Executive Director may make determinations by category of supply, service or construction item(s) that it is either not practicable or not advantageous to the Authority to procure specified types of supplies, services, or construction by competitive sealed bidding. Procurements of the specified types may then be made by competitive sealed Proposals based on this determination. The Executive Director may revoke such determination at any time, and all such determinations shall be reviewed from time to time for current applicability.
- 6-19-5 **Dollar Thresholds for RFPs.** Formal RFPs shall be issued by the DuPage Airport Authority for requirements that are estimated to exceed \$29,999.99. Solicitations in the form of informal RFP's may be issued for requirements estimated to be less than \$30,000 if more than one vendor is known to exist that has the capabilities of providing the product or service. The Executive Director may accept written justification from the using agency for a sole source professional service Contract even though it may exceed \$29,999.99.
- 6-19-6 **Content of the RFPs.** The RFPs shall be prepared using the following sections:
- (a) Section I - Proposal Information: This section includes where to submit Proposals, how many copies, when they are due, information regarding amendments, basis of Award and acceptance time period.

- (b) Section II - Minimum Specifications: This section will include project scope, location, performance period and general information. In the case of an RFP for Design-Build services, the RFP may request essential design concepts and disciplines, construction trades or types of subcontractors that must be listed by the Design-Build Entity in the Proposal.
- (c) Section III - Proposal Content: This section includes a list of the requirements a potential offeror must address and include in his Proposal. In the case of an RFP for Design-Build services where the Authority has identified pre-qualification requirements, the minimum qualifications that the Design-Build Entity will be required to possess to be deemed responsive shall be listed.
- (d) Section IV - Evaluation Criteria: This section includes the evaluation process, the evaluation criteria and its order of importance, and how the Proposals will be evaluated.
- (e) Section V - Terms and Conditions/Attachments/Exhibits: This section includes attachments such as sample evaluation score sheets, drawings, sketches, sample Contract, general conditions, special instructions, insurance requirements, etc.

6-19-7 **Evaluation Process.**

- (a) The Request for Proposal evaluation process shall be conducted as a fair and objective process which requires the evaluation committee to evaluate all Proposals on the specific criteria in the RFP.
- (b) Complete confidentiality is an ethical and legal requirement and is vital to fair, equitable evaluation. Before Proposals are received, the Project Manager serves as the sole technical contact for vendors and all RFP procedures and communication. After Proposals are submitted, all vendor contact is through the Executive Director's office or the designated project manager. Please remember that vendor information, number of Proposals received, results and other evaluation proceedings are confidential at all times.
- (c) Evaluation panel will be selected by the Executive Director. Evaluation panel members shall be required to sign a Procurement Integrity statement of confidentiality prior to evaluating Proposals. Committee members shall score each Proposal individually and independently; however, group Discussions are encouraged to discuss technical views to arrive at a better understanding of

technical Proposals during the evaluation process. The results of the scoring by the evaluating committee shall be totaled to determine the overall highest rated Proposal. The suggested method for totaling scores is by each evaluators rankings of the Proposals, *i.e.*, 1, 2, 3, etc.

- (d) If interviews are part of the evaluation criteria, the RFP must contain language that allows for them, and the criteria for evaluating the interviews must be sent to the offeror who will be interviewed prior to the actual interview.
- (e) The evaluation committee, prior to entering into Discussions with any offerors, will make competitive range determinations. Any and all offerors determined to be within the competitive range must be given an opportunity to interview.
- (f) Best and final offers may be requested at the conclusion of Discussions, if Discussions are determined necessary.
- (g) All offerors shall be notified as to whether they were successful at the same time the successful or selected contractor is notified of their selection.
- (h) All offerors are allowed to schedule a debriefing with the Executive Director to go over the weaknesses and strengths of their Proposal. The strengths and weaknesses of other Proposals will not be discussed.
- (i) In procuring Design-Build services, the Authority may pre-qualify proposers in accordance with a procedure set forth in the RFP for the Design-Build Contract. The pre-qualification may include any criteria deemed relevant by the Authority.

Selection criteria for the award of the Design-Build Contract may include, but not be limited to:

- (i) An evaluation of overall quality, capability, resource availability and financial stability of the Design-Build Entity.
- (ii) An evaluation of references provided with respect to responsiveness, quality of work, timeliness and overall performance.

- (iii) An evaluation of Design-Build Entity’s experience, training and qualifications on similar types and sizes of projects.
- (iv) Consideration of items such as price, proposed design approach, initial and/or life-cycle costs, project features, quality, capacity, schedule, and operational and functional performance of the facility.
- (v) The extent to which a Design-Build Entity’s Proposal meets the Performance Criteria and other requirements set forth in a Request for Proposals.
- (vi) Analysis of the cost relative to a Design-Build Entity’s ability to meet the Performance Criteria and other requirements set forth in the Request for Proposals.

Depending on the number of Proposals received, the Authority may develop a “short list” of top-ranked Design-Build Entities. The Authority may require “short-listed” Design Build Entities to submit to an interview and/or make a presentation to establish a final ranking.

6-19-8 Competitive Range Determination.

- (a) The evaluation committee, through the Executive Director, shall determine which Proposals are in the competitive range for the purpose of conducting written or oral Discussions/interviews. The competitive range shall be determined on the basis of both cost and technical criteria stated in the RFP. The determination shall include all Proposals that have a reasonable chance of being selected for Award. When there is doubt as to whether a Proposal is in fact within the competitive range, the Proposal shall be included.
- (b) If the RFP initially solicits unpriced technical proposals, they shall be evaluated to determine which are acceptable to the DuPage Airport Authority. After necessary discussion of these technical proposals is completed, the evaluation selection committee shall request the price proposals from all offerors who submitted an acceptable technical Proposal and make the Award to the lowest responsible offeror.

6-19-9 Written or Oral Discussions. If a Contract Award cannot be made on initial offers as submitted, the evaluation selection committee, through the Executive Director, shall conduct written or oral Discussions with all responsible offerors within the competitive range.

The following guidelines in subsections 6-19-10 and 6-19-11 may be used when conducting written or oral Discussions with each offeror.

6-19-10 **DO's.**

- (a) Advise the offeror of deficiencies in its Proposal so the offeror is given an opportunity to satisfy the DuPage Airport Authority's requirements.
- (b) Attempt to resolve or clarify any uncertainties concerning their Proposal.
- (c) Resolve any suspected mistakes.
- (d) If interviews are conducted as per the RFP and questions are given out to each offeror, then the scoring of these questions must be clearly written in the RFP. If the scoring is not listed in the RFP, then an amendment must be issued with the questions that clearly describe how the questions will be scored and evaluated. All offerors should be given the same questions and scored according to the RFP or Amendment. Note: If interviews are listed in the RFP, then it is not a requirement to request best and final offers unless the interviews involve price or cost questions that would require an offeror to revise their prices. The evaluation criteria of the interviews must be clear to all offerors within the competitive range.
- (e) Provide each offeror a reasonable opportunity to submit revisions to both their technical Proposals and price Proposals, as discussed, by requiring submission of best and final offers by each offeror within the competitive range at the conclusion of Discussions. Note: Offerors should be reminded that best and final offers are not mandatory. They are only an opportunity to revise if necessary.
- (f) Provide the offeror a reasonable opportunity to discuss past performance information obtained from references. Names of individuals providing references information shall not be disclosed.

6-19-11 **DONT's.**

- (a) The purpose of Discussions is not to engage in technical leveling (helping an offeror bring Proposal up to the level of others) of Proposals.

- (b) Do not use auction techniques such as indicating a cost or price an offeror must meet to be considered, advising an offeror of its price standing relative to the other offerors, or otherwise furnish information about other offerors prices. (It is permissible to inform an offeror that his prices are unrealistic or too high.)
- (c) Do not inform an offeror of the number of offerors still within the competitive range.

6-19-12 **Best and Final Offers.**

- (a) Upon completion of Discussions, the evaluation selection committee may issue to all offerors still within the competitive range a request for Best and Final Offers. Oral requests for Best and Final Offers shall be confirmed in writing.
- (b) The request shall include:
 - (i) Notice that Discussions are concluded.
 - (ii) Notice that this is an opportunity to submit a Best and Final Offer.
 - (iii) A due date for submission of the Best and Final Offer.
 - (iv) Note that this is only an opportunity to revise their Proposals. If they chose not to submit a Best and Final Offer, then their original Proposal as submitted will be considered.
 - (v) After receipt of Best and Final Offers, the evaluation selection committee shall evaluate them accordingly and recommend Award be made to the offeror whose Best and Final Offer is most advantageous to the DuPage Airport Authority considering price and the other factors included in the RFP.

6-19-13 **Proposal Preparation Time.** Proposal preparation time should be set to provide offerors thirty (30) calendar days under normal circumstances to prepare and submit their Proposals. The Executive Director may modify this requirement to require less time on less complicated requirements, but in no event will the period be less than fourteen (14) calendar days.

- 6-19-14 **Form of Proposal.** The manner in which Proposals are to be submitted, including any forms for that purpose, may be designated as a part of the RFPs in Section 6-19.
- 6-19-15 **Pre-Proposal Conference.** Pre-Proposal conferences may be held. Any such conference should be held a minimum of ten (10) calendar days prior to the submission of initial Proposals.
- 6-19-16 **Modification or Withdrawal of Proposal.** Proposals may be modified or withdrawn by any offeror prior to the established due date and time.
- 6-19-17 **Receipt of Proposals.** The time and date for receipt of Proposals will be included in the RFP and may read a specific time or “close of business” on a certain date. Proposals may be submitted electronically if the RFP permits electronic submission. All electronically submitted proposals shall be received by the Authority at the email address or electronic submission destination specified in the RFP not later than the time specified in the RFP provided, however, that if no time is specified in the RFP, Proposals shall be received by the Authority not later than 4:30 pm central time at the email address or submission destination specified in the RFP. If a specific time is cited, then Proposals must be received by the time or they are considered late and will not be accepted. If “close of business” is cited, then Proposals may be accepted at any time during business hours on the date specified. Proposals will not be opened publicly, nor will the list of the names of proposers or the number of Proposals received be released publicly until such time the evaluation process is completed. It is solely the proposer’s responsibility to ensure timely receipt of proposals by the Authority regardless of method of submission.
- 6-19-18 **Late Proposals.** Late Proposals shall be handled in the same manner as late Bids.
- 6-19-19 **Only One Proposal Received.** If only one Proposal is received in response to a RFP, a second RFP will be made with the notice for same clearly noting that only one Proposal was received in response to the first Request. In the case of a second RFP, the price received from the first Request shall not be released to the public prior to the second RFP. If after the second Request only one Proposal is received again, the Executive Director has the following options:
- (a) Proceed with the evaluation of the Proposal from the single offeror; if the offer meets the requirements of the Authority as stated in the RFP and the cost is determined to be fair and

reasonable through negotiations, an Award may be made.

- (b) If the evaluation determines that the only offeror does not meet our needs, or negotiations of the cost do not result in a fair and reasonable price, then the solicitation may be canceled and re-solicited at a later date. Note: If the solicitation is canceled, the Proposal shall be returned to the offeror and the canceled solicitation file shall be documented as to why it was canceled.

If there is inadequate time for a second RFP, the resolution awarding said Contract to the lone Proposal shall state such and the foregoing requirements regarding the receipt of one Proposal after a second solicitation shall be adhered to.

- 6-19-20 **Evaluation of Proposals.** The RFP shall clearly define all evaluation criteria in order of importance, including price. Numerical rating systems and/or weights may be used but are not mandatory to be listed in the RFP. However, the criteria listed in the RFP must be listed in order of importance, and the weights or points assigned by the evaluation committee prior to evaluating Proposals must follow the listed importance accordingly. The evaluators shall not consider criteria that are not specified in the RFP when evaluating Proposals. Selection for the Award shall be conclusive based on scoring criteria as specified in the RFP. The Authority reserves the right to enter into contractual negotiations with the highest ranked firm selected by the evaluation committee. If a mutual contractual relationship cannot be established that will meet the DuPage Airport Authority's needs, then the DuPage Airport Authority reserves the right to enter into negotiations with the second highest ranked firm and so on.
- 6-19-21 **Proposal Discussions with Individual Offerors.** Discussions are held to promote understanding of the DuPage Airport Authority's requirements and the offeror's Proposal, to facilitate arriving at a Contract that will be most advantageous to the DuPage Airport Authority, taking into consideration price and the other evaluation factors set forth in the RFP. Offerors determined to be within the competitive range shall be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of Proposals prior to Award for the purpose of obtaining best and final offers. Auction techniques or disclosure of any information derived from competing Proposals are prohibited. Any substantial oral clarification of a Proposal shall be reduced to writing by the offeror.
- 6-19-22 **Mistakes in Proposals.** When it appears from a review of the Proposal before Award that a mistake has been made, the offeror should be asked to confirm the Proposal. If the offeror alleges mistake,

the Proposal may be corrected or withdrawn in accordance with rules governing mistakes in Bids.

- 6-19-23 **Award of Contract.** Award shall be made to the responsible offeror whose Proposal is determined to be most advantageous to the DuPage Airport Authority and in the Best Interest of the Authority based on the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation. If an evaluation committee is established, that committee may make that determination or may make recommendation to other levels of the Authority organization and the Executive Director. The Contract file shall contain the basis on which the Award is made. An offeror who has failed to accurately complete a Statement of Political Contributions may be denied an Award for such failure.
- 6-19-24 **Debriefing Unsuccessful Offerors.** If requested, an offeror shall be debriefed and furnished the basis for the selection and Award of the Contract. Debriefings shall include the following information:
- (a) Copies of the offeror's evaluation score sheets showing the strengths and weaknesses of their Proposal as evaluated by the committee.
 - (b) The overall evaluated cost and technical rating of the winning contractor.
 - (c) The overall ranking of all offerors.
 - (d) A summary of the rationale for Award.
 - (e) Answer any relevant questions about the process the offeror may have.
 - (f) DO NOT provide point-by-point comparisons of the debriefed offeror's Proposal with those of other offerors, or any items listed in other offerors' Proposals that may be marked confidential or proprietary.
- 6-19-25 **Public Notice - Advertisement.** Public Notice shall be given by advertising the RFP in the same manner provided for the Invitation for Bids.
- 6-19-26 **Amendments to RFP.** Amendments to RFPs may be made in accordance with Amendments to Invitation for Bids prior to submission of Proposals. After submission of Proposals, any

amendments shall be distributed to all offerors who submitted Proposals.

6-20 **SMALL PURCHASES AND INFORMAL BIDS.**

- 6-20-1 **Definition.** The procurement of supplies, equipment, materials or services having an estimated value of less than \$30,000 may be made on the open market by informal methods without public notice and advertisements and without following steps outlined herein.
- 6-20-2 **Competition Dollar Threshold.** The DuPage Airport Authority may acquire supplies, materials, equipment, or services costing less than \$2,000 without benefit of documented quotations or written competitive Bids. The Director/Manager acquiring goods or services in this manner shall be expected to use professional judgment to ensure that the DuPage Airport Authority is receiving maximum value. This rule does not preclude the option to receive written or telephone quotations. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this rule.
- 6-20-3 **Documented Written Quotations.** The Authority may procure supplies, equipment, materials, and services less than \$30,000 by soliciting written Specifications and securing documented written quotations which provide (a) the name of the company or firm, (b) the person providing the quotation, (c) the delivery date, (d) FOB information, (e) cash terms, and (f) price(s) of item(s). A minimum of three (3) businesses, if available, handling the particular commodity or service shall be requested to provide written quotations. A “No Bid” shall not meet the requirement of a responsible Bid. Award shall be made to the business offering the lowest acceptable quotation, delivery and terms being a consideration. The Authority shall maximize the opportunity for small, minority, disadvantaged and women-owned businesses to participate in informal Bids.
- 6-20-4 **Sealed Competitive Bids.** Any acquisition for supplies, equipment, materials, or services, which is estimated to exceed \$29,999.99 shall be processed formally in accordance with Competitive Sealed Bid procedures herein. Sealed competitive Bids may be used to acquire any goods, services or construction at lower dollar amounts if the Executive Director determines it to be in the Best Interest of the Authority.
- 6-20-5 **Sole Source Procurement.** Sole source procurement is permissible if a requirement is available from only a single supplier. A requirement for a particular proprietary item does not justify sole source procurement if there is more than one potential bidder or offeror for

that item or service. Some examples of circumstances that could necessitate sole source procurement are:

- (a) Compatibility of technical equipment, accessories, or replacement parts is the paramount consideration.
- (b) Where a sole supplier's item is needed for trial or testing purposes.
- (c) The purchase of supplies or equipment for which there is no competitive product.
- (d) The purchase of used equipment which may become immediately available and subject to prior sale.
- (e) There is clear and compelling reason that sole source is justified and is approved by the proper authority in these regulations
- (f) The Executive Director or designee shall make a written determination that procurement is sole source, setting forth the reasons. In cases of reasonable doubt, competition should be solicited. Any request by a using agency that procurement be restricted to one potential supplier shall be accompanied by a written explanation as to why no other will be suitable or acceptable to meet the need.

6-21 **EMERGENCY PROCUREMENT.**

- 6-21-1 **Definition.** Emergency Purchases made without compliance with the requirements herein are not to be made unless true and justifiable emergencies exist. Emergencies are defined as "need for parts, supplies, and services required in connection with repairs due to breakdown of major equipment that must be kept running, natural disasters, or other requirements which significantly interfere with the operation of the Airport."
- 6-21-2 **Scope of Emergency Procurements.** Emergency Purchases shall be limited only to a quantity of those supplies, equipment, materials, or services necessary to meet the emergency.
- 6-21-3 **Authority.** Subject to emergency disaster declarations, any using agency may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods. In the event an emergency arises after normal working hours, the using agency will notify the Executive Director on the next business day.

6-22 EQUIPMENT LEASING.

6-22-1 **Definition.** A lease is a Contract under which title to the equipment will not pass to the lessee. A lease with an option to purchase, however, allows title to pass if the purchase option is exercised and has the effect of a conditional sales agreement. Leases and purchase options should never be used to circumvent the requirements for competition. The soundest and safest approach is that any leases of equipment be subject to the requirements for competition that apply to outright purchases, as outlined herein.

6-22-2 **Execution of Lease Agreements.** All lease agreements for capital equipment shall be reviewed by the Executive Director and Authority Attorney and shall be signed only by the Executive Director, or designee, after appropriate review and negotiation of terms and conditions. The Executive Director may elect to seek additional Proposals from third-party leasing companies. Lease agreements signed by unauthorized parties may be voided and may result in personal liability. The Executive Director may designate other members of the Authority to sign Contracts which have been reviewed and approved by the Executive Director and approved as to form by the Authority attorney.

6-23 MASTER AGREEMENTS.

6-23-1 **Services and Materials.** Master Agreements may be established with vendors who supply services and materials for lesser dollar amounts where the Board believes it would not be cost effective or in the best interests of the DuPage Airport Authority from a timing standpoint to bid individual items or services for a minor project. For vendors who supply services and materials such as plumbers and electricians for example, the DuPage Airport Authority shall, at least every two (2) years, prepare IFBs to solicit proposals. The IFBs will solicit bids containing a per hour rate for services and a percentage mark up on all costs of materials to be utilized for the upcoming year. The staff of the DuPage Airport Authority shall evaluate the proposals and make a recommendation to the Board as to which vendor to enter into a Master Agreement with. No Master Agreement shall exceed \$40,000 annually or \$15,000 per project nor be entered into without a vote of the Board. No Master agreement shall exceed two (2) years in duration.

6-23-2 **Goods Only.** Master Agreements may be established with vendors who sell goods where because of the small amount of the cost of the goods the Board believes it would not be cost effective or in the best interests of the DuPage Airport Authority from a timing standpoint to bid

individual items. For these goods, the DuPage Airport Authority will, at least every two (2) years, obtain pricing from at least three (3) different retailers for items for a list of commonly purchased items. Said pricing may be in the form of a percentage discount off of the retail price to the public. The staff of the DuPage Airport Authority shall evaluate the pricing options and make a recommendation to the Board as to which vendor to enter into a Master Agreement with. No Master Agreement shall exceed \$25,000 annually or \$1,000 per item and/or \$2,500 per individual purchase nor be entered into without a vote of the Board. No Master Agreement shall exceed two (2) years in duration.

6-24 **AUTHORITY PURCHASING CARDS.** The DuPage Airport Authority's credit cards may be used for small purchases in accordance with the rules and regulations. Appropriate approvals for purchases should be obtained prior to the purchase whenever possible.

6-25 **CANCELLATION OR REJECTION OF BIDS OR PROPOSALS.**

6-25-1 **Scope.** The provisions of this rule shall govern the cancellation of any solicitation issued by the DuPage Airport Authority under competitive sealed bidding, competitive sealed Proposals, small purchases or any other source selection method and rejection of Bids or Proposals, in whole or in part, whether rejected for being non-responsive or not responsible.

6-25-2 **Policy.** Solicitations should only be issued when there is a valid procurement need. Solicitations should not be issued to obtain estimates or to "test the water. A solicitation is to be canceled only when there are valid and compelling reasons to believe that the cancellation is in the DuPage Airport Authority's best interest.

6-25-3 **Cancellation or Rejection of All Bids or Proposals Prior to Opening.** Prior to opening of Bids, a solicitation may be canceled, in whole or in part, when the Executive Director determines in writing that such action is in the DuPage Airport Authority's best interest for reasons including but not limited to:

- (a) The DuPage Airport Authority no longer requires the supplies, equipment, materials, or services.
- (b) The DuPage Airport Authority can no longer reasonably expect to fund the procurement.
- (c) Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

- (d) There are insufficient funds to award a contract.
- (e) Any other reason as determined by the Executive Director to be in the best interests of the DuPage Airport Authority.

In the event the Executive Director determines to cancel a solicitation, in whole or in part, the DuPage Airport Authority may choose to re-scope the project and/or resolicit bids, as may be determined in the best interests of the DuPage Airport Authority.

6-25-4 **Notice.** When a solicitation is canceled prior to opening, notice of cancellation shall be sent to all businesses solicited and posted on the DuPage Airport Authority’s website. The notice of cancellation shall identify the solicitation, explain the reason for the cancellation and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation.

6-25-5 **After Opening.** After opening, but prior to Award, any or all Bids or Proposals may be rejected, in whole or in part, when the Executive Director determines in writing that such action is in the DuPage Airport Authority’s best interest for reasons including but not limited to:

- (a) The supplies, equipment, materials, or services being procured are no longer needed.
- (b) Ambiguous or otherwise inadequate Specifications were part of the solicitation.
- (c) The solicitation did not provide for consideration of all factors of significance to the DuPage Airport Authority.
- (d) Prices exceeded funds available and it would not be appropriate to adjust quantities or qualities to come within available funds.
- (e) All otherwise acceptable Bids or Proposals received are at clearly unreasonable prices or terms.
- (f) There is reason to believe that the Bids or Proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.
- (g) The bidder or party submitting the Proposal has failed to comply with the Political Contribution Disclosure requirements of this Code.

- (h) There are insufficient funds to award a contract.
- (i) Any other reason as determined by the Executive Director to be in the best interests of the DuPage Airport Authority.

In the event the Executive Director determines to cancel a solicitation, in whole or in part, the DuPage Airport Authority may choose to re-scope the project and/or re-solicit Bids, as may be determined in the best interests of the DuPage Airport Authority.

6-25-6 **Documentation.** The reasons for cancellation or rejection shall be made a part of the procurement files and shall be available for public inspection.

6-25-7 **Disposition of Documents.** When Bids or Proposals are rejected or a solicitation canceled after Bids or Proposals are received, the Bids or Proposals which have been opened shall be retained in the procurement files or, if unopened, returned to the bidders or offerors upon request or otherwise disposed of.

6-26 **RESPONSIBILITY OF BIDDERS OR OFFERORS.**

6-26-1 **Application.** A determination of responsibility or irresponsibility shall be governed by this Section.

6-26-2 **Standards of Responsibility.** Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor or vendor has:

- (a) Available the appropriate financial, material, equipment, facility and personnel resources and expertise or the ability to obtain them necessary to indicate capability to meet all contractual requirements.
- (b) A satisfactory record of past performance, including conduct and cooperation.
- (c) A satisfactory record of integrity.
- (d) With respect to construction contracts, in addition to the foregoing, “Responsible Bidder or Offeror” means a bidder for construction of public works (as “construction” and “public works” are defined in the Prevailing Wage Act (820 ILCS 130/1 *et seq.*)) advertised,

awarded, and financed, in whole or in part, with public funds, regardless of cost, excluding projects on private property; and who meets all of the job specifications, the following applicable criteria, and submits evidence of such compliance:

1. All applicable laws prerequisite to doing business in Illinois, and all local ordinances; and not in conflict with any federal law.
2. Evidence of compliance with
 - A. Federal Employer Tax Identification Number or Social Security Number (for individuals)
 - B. Provision of Section 2000(e) of Chapter 21, Title 42 of the United States Code and Federal Executive Order No. 11246 as amended by Executive Order No. 11375 (known as the Equal Opportunity Employer provisions).
3. Certificates of insurance indicating the following coverages, as applicable: general liability, workers' compensation, completed operations, and automobile.
4. Compliance with all provisions and exemptions of the Illinois Prevailing Wage Act, including wages, medical and hospitalization insurance and retirement, for those trades covered in the Act.
5. Disclosure of the name and address of each subcontractor from whom the contractor has accepted a bid and/or intends to hire on any part of the project prior to the subcontractor commencing work on the project.
6. The bidder and all bidder's sub-contractors must participate in active apprenticeship and training programs approved and registered with the U.S. Department of Labor's Office of Apprenticeship for each of the trades of work contemplated under the awarded contract.
7. All contractors and sub-contractors are required to turn in certified payrolls as required by the Prevailing Wage Act (820 ILCS 130/1 et seq.), and follow all provisions of the Employee Classification Act, 820 ILCS 185/1 et seq. for projects subject to those Acts.

8. All bidders must provide three (3) projects of a similar nature as being performed in the immediate past five (5) years with the name, address and telephone number of the contact person having knowledge of the project or three (3) references (name, address, and telephone number) with knowledge of the integrity and business practices of the contractor.

6-26-3 **Information Pertaining to Responsibility.** The prospective contractor shall supply information requested by the Executive Director concerning the responsibility of such contractor. If the contractor fails to supply the requested information, the Executive Director shall base the determination of responsibility upon any available information or may find the prospective contractor to be not responsible if such failure is unreasonable.

6-26-4 **Ability to Meet Standards.** The prospective contractor or vendor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- (a) Evidence that such contractor or vendor possesses such necessary items.
- (b) Acceptable plans to subcontract for such necessary items.
- (c) A documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

6-26-5 **Written Determination of Responsibility Required.** If a bidder or offeror who otherwise would have been awarded a Contract is found not responsible, a written determination of no responsibility setting forth the basis of the finding shall be prepared by the Executive Director. 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 procurement files.

6-26-6 **Pre-Qualification.** DuPage Airport Authority construction projects in excess of \$29,999.99 may require that the prospective contractor to be pre-qualified. On such construction projects, prospective contractors may be asked to submit a financial statement in accordance with the general provisions of the construction projects documents. All prospective contractors shall fill out and return a pre-qualification questionnaire. Pre-qualification may be required for other Authority Contracts and shall be determined on an individual basis by the Executive Director.

6-27 **PROTEST.**

- 6-27-1 **Protested Solicitations.** Any actual or qualified prospective bidder, offeror, or contractor who has timely submitted a bid or offer and who is aggrieved in connection with the solicitation or Award of a Contract may protest in writing to the Executive Director. Protests may be submitted any time prior to Award; however, a Protest of an Award must be submitted in writing and received by the Executive Director within three (3) business days after the DuPage Airport Authority announces its intention to make the Award.
- 6-27-2 **Subject of Protest.** Protesters may file protest on any phase of solicitation, Bid, Proposal, or Award, including, but not limited to, procedure, specification, Award or disclosure of information marked confidential in the Bid or offer.
- 6-27-3 **Form.** The written Protest shall include, as a minimum, the following:
- (a) The name and address of the protester.
 - (b) Appropriate identification of the procurement.
 - (c) A statement of the reasons for the Protest.
 - (d) Any available exhibit, evidence or documents substantiating the Protest.
- 6-27-4 **Decision.** If the Executive Director did not participate in evaluating the bids or offers, the Executive Director may decide the Protest or may designate the Authority's general counsel to decide the Protest. If the Executive Director participated in evaluating the bids or offers, the Authority's Chairman shall designate a person not involved in the evaluation (the "Designee") to decide the Protest. The Executive Director or Designee shall provide a written determination to the protester within five (5) business days after receiving all relevant requested information.
- 6-27-5 **Appeals.** A written appeal of the decision issued by the Executive Director or Designee must be received by the Executive Director within three (3) business days after the protestor's receipt of the decision. The Executive Director, or the Designee if the decision was made by a Designee, prior to making the final decision may in his sole and exclusive discretion elect to:

- (a) Render an immediate decision in the matter;
- (b) Request additional documentation or meetings with parties involved;
- (c) Request that the Authority's Chairman select a panel of two (2) or more people who are not employees of the Authority to jointly conduct a hearing with individuals on either side of the issue; or
- (d) Utilize any other method deemed appropriate to bring the matter to timely resolution.

However, the decision, once issued, shall be final and will complete the administrative procedure. The Executive Director or Designee shall issue the final decision within seven (7) calendar days after receiving such an appeal unless extended by mutual agreement by both parties involved. Nothing herein shall give a protester the right to a hearing by a panel as described in subsection (c) above; the determination to provide such a hearing is in the sole and exclusive discretion of the Authority's Chairman.

6-27-6 **Stay of Procurement During Protest.** In the event of a protest in accordance with this Section, the Executive Director shall not proceed further with solicitation or Award of Contract until administrative remedies have been exhausted or until a written determination is made that Award of a Contract without delay is necessary to protect substantial interests of the DuPage Airport Authority.

6-28 **SUSPENSION OR DEBARMENT.** The Executive Director may suspend or debar any vendors or contractors for the following:

- (a) Default on awarded Contract. (Debarment)
- (b) Routinely performing unsatisfactory work. (Suspension or Debarment)
- (c) Violation of Contract terms and conditions without cure or remedy. (Suspension or Debarment depending on severity)
- (d) Have pending litigation against the Authority. (May only be suspended pending results of litigation)
- (e) Default on the payment of any taxes, license fees or other monies due the DuPage Airport Authority. (Suspension)

- (f) Conviction for fraud or criminal acts while performing as a contractor on any Contracts, even those not associated or written by the Authority. (Debarment)
- (g) If documentation substantiates a consistent past performance record of habitual or continuous unsatisfactory performance, safety violations, repeated violations of Contract provisions or delinquent performance by a contractor. (Suspension)
- (h) Failure to comply with the Political Contribution Disclosure requirements of this Chapter. (Suspension or Debarment)
- (i) Violation of the DuPage Airport Authority's Ethics Ordinance. (Suspension or Debarment)¹

The Executive Director may debar vendors from bidding on, or performing as a subcontractor on, any DuPage Airport Authority Contracts for a minimum period of one (1) year up to a maximum of two (2) years. Vendors may be suspended from doing any business with the Authority for a minimum period of three (3) months up to a maximum period of twelve (12) months. However, if a vendor under suspension fails to correct or cure the deficiency for which they have been suspended during the suspension period, the Executive Director may convert the suspension into a debarment. Prior to formally suspending or debarring any vendor, the Executive Director shall review and investigate all reasons and evidence supporting such a decision and shall inform the suspended or debarred vendor in writing of such decision.

The suspended or debarred vendor may, at the conclusion of the suspension or debarment period, submit a formal request to be removed from such status. Upon receipt of this request, the Executive Director will be required to investigate current and past performance since the suspension or debarment by the suspended contractor to determine responsibility.

6-29 SPECIFICATIONS.

- 6-29-1 **General Purpose and Policy.** The purpose of a specification is to serve as a basis for obtaining a supply item or service adequate and suitable for the DuPage Airport Authority's needs in a cost-effective manner taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs. It is the

¹ The Ethics Ordinance is incorporated into this Policy by reference.

policy of the DuPage Airport Authority that Specifications permit maximum practicable competition consistent with this purpose.

- 6-29-2 **Use of Functional or Performance Descriptions.** Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the need of the DuPage Airport Authority.
- 6-29-3 **Preference for Commercially-Available Products.** To the extent practicable, preference shall be given to the procurement of standard commercial products. In developing Specifications, accepted commercial standards should be used and unique requirements should be avoided.
- 6-29-4 **Brand Name or Equal Specifications - Conditions for Use.** Brand Name or Equal Specifications may be prepared when it is in the best interest of the DuPage Airport Authority and when the item to be procured is best described by the use of such a specification. Brand Name or Equal Specifications shall seek to designate as many different brands as are practicable as “or equal” references and shall further state those substantially equivalent products which will be considered for Award.
- 6-29-5 **Brand Name Specifications - Conditions for Use.** Since use of a Brand Name Specification is restrictive, it may be used only when the brand name or items will satisfy the DuPage Airport Authority needs or the item is to be used for resale purposes. The Airport Authority shall seek to identify sources from which the designated brand name or item can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under provisions herein.
- 6-29-6 **Qualified Products List - Conditions for Use.** A Qualified Products List may be developed when testing or examination of the materials or equipment is required prior to the issuance of the solicitation.
- 6-29-7 **Specifications Prepared by Other Than Authority Staff.** All Specifications prepared by other than DuPage Airport Authority Staff, including consultants, architects, engineers, and designers, shall not be restrictive but shall, to the extent practicable, allow for maximum competition.

6-30 **BONDS, INSURANCE & CONTRACTS.**

6-30-1 **Bid Security - General.** Invitations for Bids for construction, labor, and public improvement Contracts in excess of \$29,999 shall require the submission of Bid security in an amount equal to at least five percent (5%) of the Bid, at the time the Bid is submitted. The Executive Director may set Bid security requirements, in an amount of not more than five percent (5%) of the Contract amount, for other types and dollar amounts of Contracts if deemed necessary. The Executive Director may determine it necessary to require Bid security on projects less than \$30,000. If a bidder fails to accompany the Bid with the required Bid security, the Bid shall be rejected as not responsive.

6-30-2 **Acceptable Bid Security.** Acceptable Bid security shall be limited to:

- (a) A one-time Bid Bond underwritten by a company licensed to issue bonds in the State of Illinois.
- (b) A bank cashier's check made payable to the DuPage Airport Authority.
- (c) A bank certified check made payable to the DuPage Airport Authority.
- (d) An irrevocable letter of credit in a form acceptable to the Authority.

The Bid security is submitted as a guarantee that the Bid will be maintained in full force and effect for a period of not less than sixty (60) days after opening of the Bids or as specified in the Invitation for Bids.

6-30-3 **Contract Bonds.** For Contracts in excess of \$29,999.99, a separate Performance Bond, Labor and Materials Payment Bond and Maintenance Bond may be required for all construction, labor, and public improvement Contracts each in the amount of one hundred percent (100%) of the Contract price. The Contractor shall deliver these bond(s) to the DuPage Airport Authority within ten (10) calendar days after receipt of the Notice of Award, or at the same time the Contract is executed. If the contractor fails to deliver the required Bond(s), the contractor's Bid or Contract may be rejected or terminated for default. The Bond(s) must be submitted on Bond form(s) prepared and approved by the DuPage Airport Authority's attorney and executed by a surety company authorized to do business

in the State of Illinois. Performance, Payments and Material and Maintenance Bonds may be required on Contracts less than \$30,000 if the Executive Director determines it to be in the Best Interest of the Authority.

- 6-30-4 **Legal Review of Bonds/Insurance Certificates.** All Bonds shall be on Bond Forms prepared and approved by the DuPage Airport Authority Attorney, including bonds required on solicitations and Contracts less than \$30,000. All Contract Bonds or other sureties shall be reviewed with the Contract for legal sufficiency. Deletions or additions to the Bond terms by contractors or sureties shall not be permitted.

- 6-30-5 **Insurance Requirements.** The Executive Director may require such insurance as the Executive Director may deem necessary for the protection of the DuPage Airport Authority, or as may be required by the DuPage Airport Authority's Rules and/or Regulations. When a Contract requires Contractor insurance, the insurance certificates shall be provided with the Contract, including all exceptions and riders attached to the certificate, and shall be reviewed for legal sufficiency by the DuPage Airport Authority attorney. All Authority Contracts shall include a requirement for the provision of Worker's Compensation insurance. All Contractors shall carry Worker's Compensation insurance. At a minimum, this insurance coverage shall be in the statutory amount. Independent Contractors shall carry Worker's Compensation insurance to cover themselves and any employees or agents working, or who may work, under the Authority Contract. Workers and contractors who are not protected by Worker's Compensation insurance shall not participate in a DuPage Airport Authority Contract.

- 6-30-6 **Additional Bonding.** If at any time during the continuance of a Contract a surety on the Contractor's bond or bonds becomes irresponsible, the DuPage Airport Authority shall have the right to require additional and sufficient sureties which the contractor shall furnish within ten (10) calendar days after written notice to do so. Such surety bond shall cover the entire Contract amount, regardless of changes in total Contract amount.

- 6-30-7 **Exceptions.** If it is deemed by the Executive Director to be in the DuPage Airport Authority best interest, the Executive Director may waive or reduce the dollar amounts of any bonds or insurance, except Worker's Compensation Insurance, if the actual Contract price is less than \$10,000. However, in the event that the price or any construction, labor, or public improvement Contract for which the Executive Director has reduced or waived bonds should reach a value of

\$15,999.99 or more, through change orders or otherwise, then the contractor may be required to provide separate bonds, each in the amount of one hundred percent (100%) of the new Contract price, and additional insurance as determined by the Executive Director.

- 6-30-8 **Execution of Contracts.** All DuPage Airport Authority Contracts shall be procured in accordance with all applicable DuPage Airport Authority rules, ordinances, guidelines and state and federal laws. No DuPage Airport Authority Contract shall be approved or executed unless and until sufficient funds have been appropriated by the DuPage Airport Authority budget and are available for the Contract. All Contracts shall be written on DuPage Airport Authority's Contract forms (not other company's Contracts) and shall include provisions for termination in the event of non-appropriation of funds. The DuPage Airport Authority shall maintain the original of all Contracts.
- 6-30-9 **Legal Review of Contracts.** All DuPage Airport Authority Contracts in excess of \$29,999.99, and any other Contracts determined necessary by the Executive Director, shall be reviewed as to legal form by the DuPage Airport Authority's attorney, except as may otherwise be provided in these rules or by direction of the DuPage Airport Authority Board of Commissioners. DuPage Airport Authority Contracts shall utilize only those Contract terms and standard forms, including Purchase Orders, which have been approved for use by the Executive Director and/or the DuPage Airport Authority's attorney.
- 6-30-10 **Legal Notice to Bidders - Required Contract Provisions.** All Authority Contracts, regardless of dollar value, shall contain the DuPage Airport Authority appropriation of funds clause and shall contain a clause designating the law governing the Contract to be Illinois law and that the venue and court jurisdiction for all legal actions shall be the Eighteenth Judicial Circuit Court, DuPage County, Illinois, unless otherwise specifically required by federal or state law.