

CFX CODE OF POLICIES
Chapter 10: Procurement

EFFECTIVE DATES

Art.	Title	Adopted By	Last Revision	Version Date
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CONTENTS

ARTICLE 1: PROCURMENT POLICY10-1

Division I: General Provisions10-1

 Section 10.1 Title.....10-1

 Section 10.2 Authority10-1

 Section 10.3 Statement of Policy.....10-1

 Section 10.4 Definitions.....10-2

 Section 10.5 Responsibility and Function.....10-3

 Section 10.6 Standard of Conduct.....10-4

Division II: Competition and Methods of Procurement10-5

 Section 10.7 Competition Requirement.....10-5

 Section 10.8 Procurement Thresholds10-5

 Section 10.9 Approval/Execution Thresholds.....10-6

 Section 10.10 Methods of Procurement10-7

 Section 10.11 Alternative Methods of Procurement10-9

 Section 10.12 Waivers of Competition Requirements10-9

 Section 10.13 Exemptions from Competition10-11

 Section 10.14 Emergency Suspension of Procurement Policy10-13

Division III: Procurement Programs10-13

 Section 10.15 Purchasing Card Program10-13

 Section 10.16 Owner Direct Purchase Program.....10-14

 Section 10.17 Emerging and Developing Technology Pilot Program.....10-14

 Section 10.18 Rapid Response Program10-15

 Section 10.19 Environmental Procurement Program10-16

 Section 10.20 Small Sustainable Business Program10-16

Division IV: Contracting10-17

 Section 10.21 Contract Standardization10-17

 Section 10.22 General Counsel's Review and Approval Obligation.....10-17

Section 10.23 Contract Terms and Conditions.....	10-18
Section 10.24 Amendments, Renewals, and Extensions.....	10-19
Section 10.25 Termination of Contract.....	10-20
ARTICLE 2: PROTEST RESOLUTION POLICY	10-21
Division I: General Provisions	10-21
Section 10.26 Title.....	10-21
Section 10.27 Authority	10-21
Section 10.26 Statement of Policy.....	10-21
Section 10.27 Definitions.....	10-22
Division II: Filing a Protest	10-23
Section 10.28 Generally	10-23
Section 10.29 Standing and Exclusions	10-23
Section 10.30 Protest Requirements.....	10-24
Division III: Protest Review Process	10-27
Section 10.31 Resolution by Procurement Director.....	10-27
Section 10.32 Resolution by Administrative Hearing.....	10-27
Section 10.33 Resolution by Judicial Appeal	10-29
Section 10.34 Publication for Procurement Solicitations	10-30
ARTICLE 3: LOBBYING BLACKOUT POLICY.....	10-31
Division I: General Provisions	10-31
Section 10.35 Title.....	10-31
Section 10.36 Authority	10-31
Section 10.37 Statement of Policy.....	10-31
Section 10.38 Definitions.....	10-31
Section 10.39 Prohibition of Lobbying.....	10-32
Section 10.40 Exceptions to Policy.....	10-32
Section 10.41 Publication for Procurement Solicitations	10-32

Division I: General Provisions

Section 10.1 Title

The provisions of this Article shall be known and cited as the “**Procurement Policy**”.

Adopted: 2024-440.

Section 10.2 Authority

10.2.1 The Central Florida Expressway Authority (“**CFX**”) is empowered by Chapter 348, Part III, Florida Statutes, to acquire, hold, construct, improve, maintain, and operate the Central Florida Expressway System, and is further authorized to make contracts and to execute all instruments necessary and convenient for conducting its business.

Adopted: 2024-440.

Section 10.3 Statement of Policy

10.3.1 The Governing Board (“**Board**”) of CFX hereby establishes a centralized procurement system for CFX by adoption of this Procurement Policy, the purpose of which is to:

- (A) Establish the guiding principles and policies governing procurement by CFX;
- (B) Promote public confidence in the integrity and transparency of the procedures followed by CFX when procuring goods and services required;
- (C) Ensure fair and equitable treatment of all persons who participate in CFX’s procurement process;
- (D) Maximize economy in procurement activities and, to the fullest extent possible, the purchasing value of CFX funds; and
- (E) Foster efficiency and reduce administrative burden in the day-to-day business functions of CFX.

10.3.2 This Procurement Policy applies to procurements by CFX solicited and/or entered into after this Procurement Policy’s approval date by the Board. This Procurement Policy supersedes all previously adopted procurement policies.

10.3.3 Unless otherwise stated in this Procurement Policy, all purchases of goods and/or services shall be made through or by the Procurement Department.

10.3.4 Nothing in this Procurement Policy shall prevent CFX from complying with the terms and conditions of any grant, gift, bequest, or loan, or any cooperative agreement with any local, state, or federal agency provided such terms and conditions are compliant with applicable law. To the extent the requirements of this Procurement Policy or the Procurement Procedures Manual are

inconsistent with any such alternative terms and conditions, such alternative terms and conditions shall take precedence so long as they are consistent with applicable law.

- 10.3.5 All changes to this Procurement Policy require approval of the Board. No process or procedure implementing this Procurement Policy may conflict with the provisions of this policy in any manner.

Adopted: 2024-440.

Section 10.4 Definitions

- 10.4.1 Wherever used in this Article or in the Procurement Procedures Manual, the following terms shall have the following meanings indicated, unless context provides otherwise, and such meanings will apply to both the singular and plural thereof:
- (A) **“CFX Area of Service”** shall mean the area served by CFX in accordance with Section 348.754, Florida Statutes; more specifically, the geographical boundaries of Orange, Seminole, Lake, Brevard, and Osceola counties.
 - (B) **“Contract”** shall mean the legal instrument, regardless as to what it is called, by which CFX procures goods and/or services.
 - (C) **“Contractor”** shall mean any person or entity who contracts, intends to contract, or is in the market to contract to sell or lease goods and/or services to CFX. The terms **“Contractor”**, **“Consultant”**, and **“Vendor”** may be used interchangeably throughout this Procurement Policy.
 - (D) **“Construction Services”** shall have the same meaning as that provided in Section 218.72, Florida Statutes. More specifically, **“Construction Services”** shall mean all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or other improvements to real property.
 - (E) **“Cooperative Purchasing”** shall mean procurement conducted by or on behalf of CFX and/or more than one public procurement unit or agency. This is distinguished from **“Piggybacking”** as defined below.
 - (F) **“Good”** shall mean any tangible personal property, including without limitation any material, equipment, commodity, item, or product. The term **“good”** shall be read to specifically exclude any services – other than those directly related to the requisition, transport, delivery, and other of any such goods and any tangential labor associated therewith, real property, or any interest in real property. For the purposes of this Procurement Policy, software shall be considered a good, while software licenses or subscriptions shall be considered a service.
 - (G) **“Piggybacking”** shall mean the purchase of goods and/or services, other than Professional Services, from the purchasing agreements of special districts, municipalities, or counties, as authorized in Section 189.053, Florida Statutes. This is distinguished from **“Cooperative Purchasing”**, as defined above.
 - (H) **“Procurement”** shall mean the buying, purchasing, renting, leasing, or other acquisition of goods and/or services for public purposes in accordance with all applicable law, rules, regulations, and procedures intended to provide for the economic expenditure of public

funds, regardless of the source of funds used. It includes without limitation all functions which pertain to obtaining any goods and/or services. **“Procurement”** shall not include:

- (1) Any real estate transaction, including the sale, lease, exchange, and/or acquisition of real property or any interest therein;
 - (2) Goods and/or services given or accepted by CFX via grant, gift, or bequest;
 - (3) Employment agreements or collective bargaining agreements; or
 - (4) Any agreements between CFX and any other entity that does not involve the purchase of goods and/or services by CFX.
- (I) **“Professional Services”** shall have the same meaning as that found in Section 287.055, Florida Statutes. More specifically, **“Professional Services”** shall mean those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the State of Florida, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.
- (J) **“Services”** shall mean the furnishing primarily of labor, time, and/or effort by Contractors, wherein the submission of goods or specific end products – other than reports, studies, plans, advisories, contractual documents, or other documents relating to the required performance – is incidental or secondary. This term shall include without limitation Construction Services, Professional Services, and Specialized Services.
- (K) **“Specialized Services”** shall mean services the value of which are substantially measured by professional competence of the person or entity performing them and which are not susceptible to realistic evaluation/assessment by cost of services alone. **“Specialized Services”** shall include without limitation services customarily rendered by attorneys, certified public accountants, insurance and/or financial personnel, public relations firms, legislative advisors, and/or systems planning and management advisors. For purposes of this Procurement Policy, **“Specialized Services”** shall not include services that meet the definition of “Professional Services” above.

Adopted: 2024-440.

Section 10.5 Responsibility and Function

10.5.1 Procurement Director

- (A) Subject to the provisions of this Procurement Policy, the Director of the Procurement Department (**“Procurement Director”**) shall serve as the principal officer for the procurement of all goods and/or services by CFX.
- (B) The Procurement Director shall:
- (1) Administer the central procurement, purchasing, and contracting system for CFX;
 - (2) In a manner consistent with this Procurement Policy, develop, maintain, review, and, when prudent or necessary, revise, CFX’s Procurement Procedures Manual which shall be annually reviewed and approved by the Executive Director;

- (3) Ensure that the requirements set forth in this Procurement Policy and the Procurement Procedures Manual are complied with for all procurements made by CFX;
- (4) Take all reasonable and practicable action necessary to further the objectives of CFX with regard to the promotion and encouragement the participation of small, minority, and women-owned businesses in CFX's Procurements;
- (5) In accordance with the directives of this Procurement Policy, determine the method of selection for each procurement; and
- (6) Perform other duties as directed by the Board and the Executive Director or designee thereof.

10.5.2 **Procurement Procedures Manual.** The Procurement Procedures Manual shall be reviewed annually and revised as necessary to reflect the current business needs of CFX. The Executive Director is authorized to approve revisions to the Procurement Procedures Manual unless any such revisions would result in a conflict with the letter or intent of this Chapter.

10.5.3 **Procurement Department.** The specific responsibilities and functions of the Procurement Department include:

- (A) Developing purchasing objectives for procurement in a manner that meets CFX's requirements;
- (B) Working with other CFX departments to establish standardization of goods and/or services where practical within a competitive environment;
- (C) Promoting and maintaining good will between CFX and its contractors, including encouraging full and open competition and assuming fair and equitable business dealings with all contractors;
- (D) Ensuring that all procurements are made in compliance with the applicable statutes, rules, regulations, and policies;
- (E) With the assistance of the purchasing user department, handling complaints and warranties regarding purchases and negotiating the return of merchandise;
- (F) Training CFX personnel regarding this Procurement Policy and the Procedures Manual, as needed; and
- (G) Managing the operational procedures for the P-Card Program as established in **Section 10.15: Purchasing Card Program** below.

Adopted: 2024-440. Revised: 2024-444.

Section 10.6 Standard of Conduct

- 10.6.1 Except for purchases made in accordance with **Section 10.15: Purchasing Card Program** below, CFX employees are prohibited from purchasing any materials, supplies, equipment, or services, or entering into any procurement contract on behalf of CFX unless expressly authorized to do so by the Board.
- 10.6.2 Individuals responsible for unauthorized purchases or obligations shall be in violation of this Procurement Policy and shall be disciplined accordingly. Such disciplinary action may include

reimbursement by the individual to CFX for unauthorized purchases or obligations. Depending on the severity of the violation, further disciplinary action may be warranted.

- 10.6.3 No employee of CFX shall obligate CFX in any transactions whereby the employee may derive income or benefits other than those provided as compensation from CFX.
- 10.6.4 The Standard of Conduct as it relates to this Procurement Policy and the Procurement Procedures Manual is promulgated in CFX's Code of Ethics, as may be amended by the Board from time to time.

Adopted: 2024-440.

Division II: Competition and Methods of Procurement

Section 10.7 Competition Requirement

- 10.7.1 It shall be the policy of this Board that, unless otherwise provided in this Procurement Policy, all procurements shall generally be competitively solicited.
- 10.7.2 The Board hereby recognizes the following:
 - (A) Fair and open competition is a basic tenet of public procurement;
 - (B) Such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically; and
 - (C) Documentation of the acts taken, and effective monitoring mechanisms, are important means of curbing any improprieties and establishing public confidence in the process by which procurements are made.
- 10.7.3 The Board additionally finds the following:
 - (A) The expeditious delivery of projects and acquisition of necessary goods and services best serves CFX and its customers;
 - (B) Specifically in relation to Small Purchases, the benefits of competition, whether by formal or informal method of competitive procurement, do not outweigh the cost or the administrative burden associated therewith; and
 - (C) Formal methods of competitive procurement (e.g., invitations to bid, or requests for proposals, etc.) add additional inefficiencies, administrative burden, and time to the completion of the procurement process; whereas, informal, quote-based procurements assist in streamlining the procurement process while still soliciting competition. Accordingly, formal methods of competitive procurement should generally be reserved for procurements of higher value and impact.

Adopted: 2024-440.

Section 10.8 Procurement Thresholds

- 10.8.1 To balance the benefits of competitive procurement against the cost and administrative burdens associated therewith, the Board hereby sets the following "**Procurement Thresholds**":

- (A) “**Small Purchase Threshold**” shall mean the maximum aggregate contract award value for which a procurement may be made without soliciting competition in accordance with **Subsection 10.10.2** of this Procurement Policy. The Small Purchase Threshold shall be as shown in **Table 1: Procurement Thresholds** below.
- (B) “**Informal Procurement Threshold**” shall mean the maximum aggregate contract award value for which a procurement may be made using a simplified, quote-based method of competitive procurement in accordance with **Subsection 10.10.3** of this Procurement Policy below. The Informal Procurement Threshold shall be as shown in **Table 1: Procurement Thresholds** below.

Table 1: Procurement Thresholds	
Threshold	Amount
Small Purchase Threshold	\$5,000.00
Informal Procurement Threshold	\$150,000.00

- 10.8.2 Any procurement where the total aggregate contract award exceeds the Informal Procurement Threshold shall be made by using a formal competitive procurement method, as further discussed in **Subsection 10.10.4: Formal Procurements** below.
- 10.8.3 The amounts listed in **Table 1: Procurement Thresholds** for the Small Purchase Threshold and the Informal Procurement Threshold shall be initial thresholds as approved by the Board in August of 2024. Such amounts shall be subject to automatic adjustment every July of each even year thereafter, with such adjustment being based upon the Consumer Price Index for All Urban Consumers (CPI-U) in the South rounded up to the next highest multiple of 1000. The Procurement Director shall be responsible for timely updating the Procurement Procedures Manual to reflect the current adjusted Procurement Thresholds accordingly.
- 10.8.4 Procurements shall generally not be divided into more than one purchase order, project, or contract solely for the purpose of circumventing either of the Procurement Thresholds; however, procurements may be divided for other legitimate purposes, including without limitation providing small, minority, and women owned businesses a greater opportunity to participate in CFX’s procurements.

Adopted: 2024-440.

Section 10.9 Approval/Execution Thresholds

- 10.9.1 To optimize efficiency in the day-to-day business transactions of CFX, the Board hereby delegates the approval and execution authorities as found in **Table 2: Approval/Execution Thresholds** below.

Table 2: Approval/Execution Thresholds		
Total Aggregate Contract Award Value	Approval Authority	Procurement Contract Execution Authority
≤ \$75,000.00	Procurement Director	Procurement Director
> \$75,000.00 ≤ Informal Procurement Threshold	Procurement Director and Executive Director	Procurement Director with co-signature of Executive Director
> Informal Procurement Threshold	Board	Procurement Director or Executive Director

- 10.9.2 In addition to the monetary-based approval/execution thresholds above, the Procurement Director is hereby delegated the authority to:
- (A) Approve the results of any ranking and/or shortlisting by a Selection Committee, as defined in **Subsection 10.38.2(C) of Article 3: Lobbying Blackout Period** of this Chapter; and
 - (B) Engage in and complete competitive negotiation with each ranked Contractor: (1) in accordance with Section 287.055(5), Florida Statutes, for Professional Services; and/or (2) as provided in the Procurement Procedures Manual.
- 10.9.3 The monetary amounts shown in **Table 2: Approval/Execution Thresholds** above shall be adjusted every two years using the same methodology provided in **Subsection 10.8.3** above.
- 10.9.4 The Procurement Director is hereby authorized to delegate the approval and execution authority granted to them in this Section, as herein limited, to their designee upon receiving the approval of the Executive Director or the designee thereof to make such delegation.
- 10.9.5 The Executive Director is hereby authorized to delegate the approval and execution authority granted to them in this Section, as herein limited, to their designee as they seem reasonably necessary and appropriate.

Adopted: 2024-440. Revised: 2024-444.

Section 10.10 Methods of Procurement

- 10.10.1 Unless otherwise exempted or otherwise permitted under this Procurement Policy, procurements shall be made using the methods described below. The specifics of each procurement method shall be included in the Procurement Procedures Manual.
- 10.10.2 **Small Purchases**
- (A) “**Small Purchase(s)**” shall mean procurements where the aggregate contract award value does not exceed the Small Purchase Threshold, with such threshold being as established in **Section 10.8: Procurement Thresholds** above.
 - (B) Small Purchases may be made without soliciting competition so long as the purchasing user department or individual considers the price to be reasonable based on research, experience, and/or purchase history.
 - (C) The user department or individual may secure the necessary pricing for Small Purchases on their own or request the assistance of the Procurement Department.

10.10.3 Informal Procurements

- (A) **“Informal Procurement(s)”** shall mean procurements where the aggregate contract award value exceeds the Small Purchase Threshold but does not exceed the Informal Procurement Threshold, each such threshold as established in **Section 7.5: Procurement Thresholds** above.
- (B) Unless otherwise exempted or permitted under this Procurement Policy, Informal Procurements shall be made using a simplified, quote-based method of competitive procurement.
- (C) At least three written quotes must be received before an Informal Procurement may be made. If, for some reason, three quotes cannot be obtained, the good faith attempts to receive three quotes must be documented prior to an Informal Procurement being made.
- (D) If the aggregate contract award value of the Small Purchase does not exceed \$75,000.00, the purchasing user department may secure the necessary written quotes on its own or request the assistance of the Procurement Department.
- (E) If the aggregate contract award value of the Small Purchase exceeds \$75,000.00, then the written quotes must be secured directly by the Procurement Department.
- (F) Any quotes received that would result in an aggregate contract award value exceeding the Informal Procurement Threshold shall be discarded.
- (G) The monetary amounts provided in Paragraphs (D) and (E) above shall be adjusted every two years using the same methodology provided in **Subsection 10.8.3** above.

10.10.4 Formal Procurements

- (A) **“Formal Procurement(s)”** shall mean procurements where the aggregate contract award value exceeds the Informal Procurement Threshold, with such threshold being as established in **Section 10.8: Procurement Thresholds** above.
- (B) Unless otherwise exempted or permitted under this Procurement Policy, Formal Procurements shall be competitively awarded based on the submission of sealed competitive bids in response to invitations to bid, sealed competitive proposals submitted in response to a request for proposal, sealed competitive proposals submitted in response to a request for qualifications, or sealed competitive proposals submitted for competitive negotiation.
- (C) **Statutory Limitations.** When selecting the method by which to make a Formal Procurement, the Procurement Director shall be mindful of the following limitations of Florida law:
 - (1) **Professional Services Consultants.** Professional Services shall be acquired in compliance with the Consultants’ Competitive Negotiation Act (“**CCNA**”), Section 287.055, Florida Statutes, under the procedures detailed in the Procurement Procedures Manual.
 - (2) **Construction Managers.** Construction Managers and/or Program Management Entities shall be acquired in compliance with Section 255.103, Florida Statutes, under the procedures detailed in the Procurement Procedures Manual.

10.10.5 Regardless of the method of procurement used, including Alternative Procurement Methods authorized in **Section 10.11: Alternative Methods of Procurement** below, Board approval is required for the award of any contract award with a total aggregate value that exceeds the Informal Procurement Threshold.

Adopted: 2024-440.

Section 10.11 Alternative Methods of Procurement

10.11.1 The Board hereby approves the use of alternative methods of procurement to those provided in **Section 10.10: Methods of Procurement** above, including without limitation the use of Cooperative Purchasing and Piggybacking so long as such alternative methods of procurement are:

- (A) Competitive;
- (B) Compliant with applicable law, as well as the letter and intent of this Procurement Policy as determined by the General Counsel or the designee thereof; and
- (C) Determined to be in the best interest of CFX by the Procurement Director in consultation with the Executive Director.

10.11.2 The Approval/Execution Thresholds, as provided in **Section 10.9: Approval/Execution Thresholds** above, shall remain applicable regardless as to the Alternative Procurement Method used.

10.11.3 The Procurement Procedures Manual shall be revised to provide specific procedures that should be followed when using any such Alternative Method of Procurement prior to such Alternative Method of Procurement being used.

Adopted: 2024-440.

Section 10.12 Waivers of Competition Requirements

10.12.1 Competition Waiver Requirements

- (A) The Procurement Director may issue waivers from the competition requirements of this Procurement Policy to the extent authorized in this Section, or as otherwise expressly provided in this policy.
- (B) Even should a specific classification or type of procurement be deemed exempt from the competition requirements of this Procurement Policy, the Procurement Director may determine that such procurement should instead be obtained by competitive means if they believe so-doing to be practical, reasonable, and in the best interest of CFX.
- (C) Waivers of competition under this Procurement Policy shall not constitute waivers of any applicable provision of law that otherwise requires competition. As such:
 - (1) Waivers from competition for Construction Services may only be issued for awards where competition for such Construction Services would not otherwise be required under Section 255.20, Florida Statutes.

- (2) Waivers from competition for Professional Services may only be issued for awards where compliance with the competitive selection and competitive negotiation provisions of Section 287.055, Florida Statutes, would not otherwise be required.
- (D) Unless otherwise expressly provided, a waiver of this Procurement Policy's competition requirements shall not be considered a waiver of any other requirement of this policy, including without limitation the Procurement Thresholds provided in **Section 10.8: Procurement Thresholds** above or the Approval/Execution Thresholds provided in **Section 10.9: Approval/Execution Thresholds** above.
- (E) Provided that it is permitted under applicable law, nothing in this Procurement Policy shall prevent the Board from waiving its own competition requirements based upon a finding by the Board, or recommendation from the Procurement Director and/or Executive Director, that so doing would best protect the public's health, safety, and welfare and/or further the mission and interests of CFX.

10.12.2 Emergency Purchase Waivers

- (A) **“Emergency”** shall mean:
 - (1) A reasonably unforeseen breakdown in machinery, or damage, destruction, or obstruction of machinery, roadway, or any property owned or operated by CFX;
 - (2) A threatened termination of an essential service;
 - (3) The development of a dangerous condition;
 - (4) The development of a circumstance causing the stoppage or slowdown of an essential service;
 - (5) A threat to the public health, welfare, or safety; and/or
 - (6) The opportunity to secure significant financial gain, or avoid significant financial loss, through immediate or timely action.
 - (7) Regarding Construction Services, the definition of **“Emergency”** shall be limited to circumstances that meet the criteria set forth in Section 255.20(c)1., Florida Statutes, more specifically, if the construction project to be procured is undertaken to replace, reconstruct, or repair an existing public building, structure, or other public construction works damaged or destroyed by a sudden unexpected turn of events such as an act of God, riot, fire, flood, accident, or other urgent circumstances, and such damage or destruction creates:
 - (a) An immediate danger to the public health or safety;
 - (b) Other loss to public or private property which requires emergency government action; or
 - (c) An interruption of an essential governmental service.
- (B) **“Emergency Purchase”** shall mean a procurement with limited or no competitive process when such purchase is necessary to remedy or lessen the harmful effects of an Emergency.

- (C) Waivers of competition may be issued for Emergency Purchases with limited or no competitive process, and without the requisite Board approval, when such purchase is necessary to remedy or lessen the harmful effects of an Emergency.
 - (1) Under such Emergency circumstances:
 - (a) The Procurement Director, or their designee, shall be authorized to approve and execute contracts for Emergency Purchases under the Informal Procurement Threshold; and
 - (b) The Executive Director, or their designee, shall be authorized to approve and execute contracts for Emergency Purchases at any amount.
 - (2) All Emergency Purchases at or above the Formal Procurement Threshold shall be submitted to the Board for confirmation and approval at the next scheduled Board meeting practicable.

10.12.3 Sole Source Procurement Waivers

- (A) “**Sole Source Procurements**” shall mean a Procurement where the only good or service that will produce the desired results, or that is the most appropriate for the given situation, is available from only one source of supply.
- (B) Sole Source Procurements of services must be available only from Vendors who are uniquely qualified to perform such services. Such lack of an alternative source must be determined only after a reasonably thorough analysis of the marketplace.
- (C) Compatibility to existing software or equipment shall be an acceptable justification for a waiver of competition requirements provided the item meets the other criteria within the definition of a Sole Source Procurement (i.e., available from only one source and only item that will produce desired results).
- (D) Maintenance agreements, including agreements regarding the maintenance of computers and related equipment, software, copiers, faxes, and other related office equipment, servers, network switches, and firewalls, are permitted Sole Source Procurements when there is a reasonable basis to conclude that such agreements are in CFX’s best interest or when maintenance from other contractors will void an equipment warranty.

10.12.4 **Lack of Adequate Competition.** The Procurement Director may waive the competition requirements of this policy in circumstances where there is an established lack of adequate competition available in the marketplace, as determined after at least one unsuccessful solicitation.

Adopted: 2024-440.

Section 10.13 Exemptions from Competition

- 10.13.1 Due to the specific nature of each of the procurement types and classifications provided for in this Section, they are hereby exempt from this Procurement Policy’s competition requirements. No documented waiver of this policy’s competition requirements shall be required for any procurement deemed exempt hereunder.
- 10.13.2 Unless otherwise expressly provided, exemption from this Procurement Policy’s competition requirements shall not be considered exemption from any other requirement of this policy,

including without limitation the Procurement Thresholds provided in **Section 10.8: Procurement Thresholds** above or the Approval/Execution Thresholds provided in **Section 10.9: Approval/Execution Thresholds** above.

10.13.3 Exempted Procurement Types and Classifications

- (A) Small Purchases, as discussed in **Section 10.10.2: Small Purchases** above;
- (B) The purchase of regulated services, such as telephone, electricity, natural gas, water, or similar services where rates or prices are fixed by legislation or by federal, state, county, or municipal regulations. The purchase of internet services is additionally exempt under this provision;
- (C) P-Card and petty cash purchases made in accordance with established CFX procedures;
- (D) Dues and memberships in trade or professional organizations;
- (E) Subscriptions for periodicals or professional research platforms or databases;
- (F) The direct purchase of advertisement and advertising services; however, not to include the procurement of the services of an advertising agency which must be competed;
- (G) Postage costs;
- (H) Legal services, paralegal services, appraisal services, mediators, hearing officers, expert witnesses, and court reporters;
- (I) Abstracts of titles for real property and title insurance for real property;
- (J) Copyrighted materials and/or patented materials;
- (K) Artistic services, including the rendering by a contractor of its time and effort to create or perform an artistic work in the fields of music, dance, drama, folk art, creative writing, painting, sculpture, photography, graphic arts, craft arts, industrial design, costume design, fashion design, motion pictures, television, radio, or tape and sound recording;
- (L) Job-related travel; seminars; tuition; registration fees; and training;
- (M) Blanket purchase orders issued on an annual basis wherein the exact quantity of items or identification of specific items cannot be determined in advance;
- (N) Direct contracts for goods and/or services between CFX and any other state, county, special district, municipal government, state college or university, and/or any other governmental agency or political subdivision;
- (O) Food related to an authorized function; and
- (P) Employment agreements.

10.13.4 Notwithstanding anything in this Procurement Policy to the contrary, in connection with any procurement by CFX of services related to a potential capital markets transaction to which CFX may be a party, including, without limitation, the issuance of bonds or other debt instruments or the entry by CFX into derivative financial arrangements either the Chair of the Board or the Executive Director may direct, as they deem it to be in the best interests of CFX, that CFX procure such services in a manner customarily employed by state and other local governmental entities.

The Executive Director shall ensure that any such alternate means of procurement is done in a fair and objective manner and in as competitive a manner as is practicable under the circumstances. Services that may be procured by such alternate means include, without limitation, credit enhancement, reserve sureties, and other similar services.

Adopted: 2024-440.

Section 10.14 Emergency Suspension of Procurement Policy

- 10.14.1 The Executive Director is authorized to, during a State of Emergency applicable to any part of the CFX Area of Service as declared by the federal government, state government, and/or any local government, temporarily suspend the applicability of this Procurement Policy until the earliest of the following dates:
- (A) The date on which the applicable State of Emergency expires, unless renewed by the declaring government; or
 - (B) The date of the next Board meeting when such temporary suspension may be approved or rescinded by the Board.
- 10.14.2 In the event of such suspension, waivers of competition shall not be necessary for purchases; however, the Procurement Department shall make a reasonable attempt to maintain control of costs through negotiation and competition whenever practicable.
- 10.14.3 Any procurement made during the time this Procurement Policy was suspended must:
- (A) Comply with applicable law; and
 - (B) Be documented and presented to the Board as an information item at the next Board meeting practicable.

Adopted: 2024-440.

Division III: Procurement Programs

Section 10.15 Purchasing Card Program

- 10.15.1 A Purchasing Card Program (“**P-Card Program**”) is hereby established to provide authorized CFX employees with the ability to make minor purchases on behalf of CFX using a CFX charge card, so long as such purchases do not exceed the limit set by the Procurement Procedures Manual as approved by the Executive Director.
- 10.15.2 All goods and/or services purchased under this P-Card Program shall be in accordance with the requirements of the Procurement Procedures Manual.
- 10.15.3 The Procurement Department shall be responsible for managing the P-Card Program and ensuring compliance with the Procurement Procedures Manual.

Adopted: 2024-440.

Section 10.16 Owner Direct Purchase Program

- 10.16.1 When a government entity buys materials for use in a public works construction project, such purchases may be exempt from sales tax should such entity follow certain procedures. Direct purchase of materials by a government entity for use in a public works construction project is commonly referred to as an “**Owner-Direct Purchase Program**” (“**ODP Program**”).
- 10.16.2 There is hereby established an ODP for CFX. It shall be the policy of CFX to, whenever reasonable, practical, and appropriate, include language in the project specifications for its public works construction projects that gives CFX the option to make direct purchases of certain materials from a contractor’s vendors at prices quoted to the contractor. This option will allow CFX to take advantage of its exempt status from payment of Florida State Sales Tax, resulting in a cost reduction to CFX.
- 10.16.3 All purchases made under the ODP program must comply with applicable Florida law.
- 10.16.4 CFX’s Director of Construction and the Procurement Director shall be responsible for determining the practicality and appropriateness of the direct purchase option on a per project basis, based on procedures detailed in the Procurement Procedures Manual.
- 10.16.5 If the ODP option is not exercised for a project having a construction cost meeting or exceeding \$15,000,000.00, a memo signed by the Chief of Infrastructure and the Procurement Director, or the designees of such individuals, shall be placed in the project file giving the specific reasons why the ODP option was not exercised.
- 10.16.6 Board approval of an ODP is not required since the Board would have previously approved the award of the construction or other contract from which the funds to pay for the ODP will be taken. The Procurement Director is authorized to approve an ODP regardless of the amount.

Adopted: 2024-440. Revised: 2024-444.

Section 10.17 Emerging and Developing Technology Pilot Program

- 10.17.1 It is the Board’s policy that CFX continues to be on the cutting edge of emerging and developing technologies that may assist CFX in meeting its growing maintenance and operational needs. As such, an Emerging and Developing Technology Pilot Program (“**EDT Pilot Program**”) is hereby established so that CFX may engage in pilots of emerging and/or developing technology and/or software solutions without requiring competitive procurement.
- 10.17.2 Under this EDT Pilot Program, emerging and/or developing technology or software solutions shall be exempt from the competition requirements of this Procurement Policy so long as:
- (A) The purpose of the subject pilot is to test and/or refine a technology or software solution that is still in development and is not readily available on the commercial market for purchase;
 - (B) The pilot is provided, managed, and administered by the Contractor either for free, or for a nominal amount associated only with the actual direct costs incurred by the Contractor, with no consideration of profit or administrative overhead being payable by CFX; and
 - (C) The Chief of Technology/Operations deems CFX’s participation in such a pilot program to be of interest to CFX based upon criteria to be developed and set forth in the Procurement Procedures Manual.

10.17.3 In all pilot program Contracts, CFX shall incorporate provisions:

- (A) Clarifying that CFX's participation in any such pilot shall not be considered an endorsement of the technology and/or software solution by CFX and prohibit the use of CFX's name or status as a participant in the pilot in any of the Contractor's sales, promotion, and/or marketing efforts;
- (B) Prohibiting any private branding of the technology and/or software being piloted; and
- (C) Granting CFX the option to procure use of the applicable emerging and/or developing technology should, after completion of such pilot program, the Chief of Technology/Operations:
 - (1) Determines that the pilot program was successful; and
 - (2) In consult with the Executive Director, deems exercising such option would be in the best interest of CFX.

Adopted: 2024-440.

Section 10.18 Rapid Response Program

- 10.18.1 It is the Board's policy that expedited procurement for minor public construction, repair, and maintenance projects is often needed to protect the public's health, safety, and welfare, or to otherwise further the mission and interests of CFX. As such, the Board hereby establishes a Rapid Response Program (the "**RR Program**"). The goal of the RR Program is that such expedited procurements will progress from identification of the project to commencement of construction is less than 60 days.
- 10.18.2 "**Rapid Response Contract(s)**" shall be task-order based contracts utilized for minor public construction and maintenance projects that require expedited procurement and construction to protect the public's health, safety, and welfare, or to otherwise further the mission and interests of CFX.
- 10.18.3 Rapid Response Contracts shall be procured by public invitation to bid for specific types of work based upon unit prices. Pools of rapid response contractors shall be populated with contractors that meet the specified qualifications and are able to provide expedited work. A minimum number of at least three contractors shall be preferred for each type of work, with each such contractor being awarded separate Rapid Response Contract.
- 10.18.4 Task orders issued under Rapid Response Contracts shall be limited to construction of minor improvements and/or performance of repair or maintenance to a public building, structure, or other public construction works that do not exceed the threshold amounts set for construction and electrical work provided in Section 255.20(1), Florida Statutes, as adjusted in accordance with Section 255.20(2), Florida Statutes.
- 10.18.5 Rapid Response Contracts shall require that task orders issued thereunder shall be competed among the task-applicable pool of rapid response contractors.
- 10.18.6 Compensation owed to rapid response contractors under each Rapid Response Contract shall not exceed an aggregate contract award value, inclusive of all tasks issued thereunder, of \$2,000,000.00 per rapid response contractor per year.

10.18.7 The Procurement Director is hereby authorized to approve and execute all task orders issued under any Rapid Response Contract, so long as the aggregate annual amount of all such task orders so-approved and executed does not exceed the limit set forth in **Subsection 10.18.6** above.

Adopted: 2024-440.

Section 10.19 Environmental Procurement Program

10.19.1 It shall be the policy of the Board to support the purchase of recycled and environmentally preferred products, when practical, in an effort to minimize environmental impacts of the goods and services procured by CFX. In the context of this Section, “practical” is defined as goods and services that are sufficient in performance and reasonably available at a reasonably competitive cost.

10.19.2 To implement this provision, the Procurement Department shall develop a procedure that:

- (A) Encourages the use of recycled/recyclable materials through procurement practices with vendors, contractors, businesses, and other governmental agencies.
- (B) Adopts the use of recycled supplies/materials as a priority.
- (C) Generates less waste material by reviewing how supplies, materials and equipment are manufactured, purchased, packaged, delivered, used, and disposed of.
- (D) Gives preference, where items are of a similar cost, to those that are manufactured with a high recycled content or are environmentally preferable.
- (E) Provides for training and raising the awareness of CFX employees to ensure they consider environmental issues in procurement decisions.

10.19.3 Nothing in this provision or in the Procurement Procedures Manual shall be construed as requiring the purchase of products that do not perform adequately and/or are not reasonably available at a reasonable cost.

Adopted: 2024-440.

Section 10.20 Small Sustainable Business Program

10.20.1 A Small Sustainable **Business Enterprise** Program is hereby established as a procurement method to expedite the bidding and award process for small contracts between \$50,000.00 and \$200,000.00. The Procurement Procedures Manual includes the process and guidelines for administering the Program.

10.20.2 Small Sustainable Business Enterprise Program to the extent the Executive Director can authorize advertisement and award of small contracts valued between \$50,000.00 and \$200,000.00 each in order to expedite the bidding and award process. Each award by the Executive Director shall be submitted to the Board for ratification and approval at the next regularly scheduled Board meeting.

Adopted: 2024-440. Revised: 2024-444.

Division IV: Contracting

Section 10.21 Contract Standardization

- 10.21.1 Standard CFX boilerplates for contracts, amendments, supplemental agreements, renewals, and similar documents shall be developed and used whenever possible. The Procurement Director shall work with General Counsel to develop such standardized boilerplates.
- 10.21.2 General Counsel may decide, using their sole professional discretion, to update and revise such standardized boilerplates from time to time. The Procurement Director shall additionally be responsible for making suggested revisions to the standardized boilerplates for approval by General Counsel should the Procurement Director believe such revision would best serve CFX and its procurement objectives.

Adopted: 2024-440.

Section 10.22 General Counsel's Review and Approval Obligation

10.22.1 Small Purchase Procurement Review

- (A) General Counsel shall not generally be required to review, approve, or sign-off on any Small Purchase Procurement contracts or purchase orders.
- (B) The foregoing notwithstanding, should the Procurement Director or Risk Management, using their sole professional discretion and due to the particular nature of such procurement, believe that legal review, approval, or sign-off of a Small Purchase contract or purchase order by General Counsel is merited, General Counsel shall provide such review upon request.

10.22.2 Informal and Formal Procurement Review

- (A) Once a particular boilerplate has been standardized with the review and approval of General Counsel, Informal and Formal Procurements may be made using such standardized boilerplates without further review, approval, or sign-off from General Counsel so long as:
- (1) No change or amendment has been made to the standardized boilerplate's language as most recently approved by General Counsel; and
 - (2) The applicable vendor has not added any additional terms and/or conditions.
- (B) General Counsel is required to review, approve, and sign-off on Informal and Formal Procurements where the applicable standardized boilerplate's language has been altered in any manner from the language most recently approved by General Counsel.
- (C) It is recognized that, due to their specialized nature, agreements with other governmental agencies, certain vendors, and financial institutions may preclude the use of standard CFX boilerplate documents. In such instances, review, approval, and sign-off of such non-standard documents by the General Counsel for Informal and Formal Procurements must be received prior to the following applicable date:
- (1) For Informal Procurements, prior to execution of the contract as authorized in **Section 10.9: Approval/Execution Thresholds** above.

- (2) For Formal Procurements, prior to approval by the Board.

Adopted: 2024-440.

Section 10.23 Contract Terms and Conditions

10.23.1 Contract Terms

- (A) The Procurement Director is hereby granted the authority to, within the limitations set forth in this Subsection, determine the initial and renewal terms of a procurement contract based on the nature of the procurement.
- (B) Unless otherwise provided in this Procurement Policy, no procurement contract may have an initial term that exceeds five years, nor shall any one renewal period exceed the length of the initial term. A procurement contract may contain multiple renewal periods; however, the sum of the initial term and all renewal periods may not cumulatively exceed ten years in length.
- (C) Contracts for “continuing contracts”, as defined in Section 287.055(2)(g), and contracts for Specialized Services shall have initial and renewal terms set in compliance with Paragraph (B) above; however, in regard to any work or tasks outstanding at the time of contract expiration, the terms and conditions of such contracts may continue to run without need for extension or renewal of the contract until either the Consultant’s satisfactory completion of such tasks or termination of the contract by CFX.
- (D) Project-specific Professional Services contracts and contracts for Construction Services shall have no term, and instead shall be based on project schedules and continue in full force and effect until either the specific project for which the procurement was made has been satisfactorily completed by the Contractor or the contract is terminated in compliance with the terms and conditions therein.
- (E) Rapid Response Contracts shall have a term no longer than three years with no renewals; however, the terms and conditions of such contracts shall continue to run with any tasks outstanding at the time of expiration of the rapid response contract until the Contractor’s satisfactory completion of such tasks without need for extension or renewal of the Contract.

10.23.2 Major Sub-Vendor Requirements

- (A) All contracts for Professional Services and Specialized Services shall contain a “Major Sub-Vendor” provision in substantially the following form, with the terms “Contractor” and “Consultant” used as appropriate:

*“If, during the term of this Contract and any renewals hereof, the Contractor/Consultant desires or intends to provide payment to a subcontractor, subconsultant, and/or service provider (collectively “**Sub-Vendor**”) that was not disclosed by the Contractor/Consultant to CFX at the time this Contract was originally awarded, and such payment would, standing alone or aggregated with prior payments, provide to the proposed Sub-Vendor under this Contract including any renewals or extensions hereto, equal or exceed \$75,000.00, the Contractor/Consultant shall first submit a request to the Procurement Director to add such Vendor to the approved Major Sub-Vendors under this Contract.*

Except in the case of an emergency, as determined by the Executive Director or the designee thereof, no such payment or obligation to make payment to any Sub-Vendor

shall be made or incurred by the Contractor/Consultant under this Contract until such Sub-Vendor has been approved by the CFX Board. In the event of a so-designated emergency, the Contractor/Consultant may make such payment or incur an obligation to pay such unapproved Sub-Vendor under this Contract only with the prior written approval of the Executive Director or the designee thereof, and any such agreement by which such payment was made or by which the obligation to pay was incurred shall contain a provision that provides that it shall be automatically terminated if not approved by the CFX Board at its next regularly scheduled meeting.

CFX shall not be responsible to Contractor/Consultant for any payments made or obligated to any such Sub-Vendor in excess of \$75,000.00 should Contractor/Consultant have failed to add such Vendor to this Contract's Major Vendors list in compliance with this provision."

- (B) The monetary amounts in the above provision shall be adjusted every two years using the same methodology provided in **Subsection 10.8.3** above.

Adopted: 2024-440.

Section 10.24 Amendments, Renewals, and Extensions

10.24.1 Amendments

- (A) The Procurement Director is hereby authorized to approve and execute contract amendments and/or supplemental agreements related to contracts for Informal Procurement so long as such amendments and/or supplemental agreements would not result in the aggregate contract award value exceeding the Informal Procurement Threshold.
- (B) If the amendment and/or supplemental agreement to such an Informal Procurement contract would increase the aggregate contract award value to an amount exceeding the Informal Procurement Threshold, then such amendment and/or supplemental agreement requires approval from the Board prior to execution by the Procurement Director.
- (C) The Procurement Director is hereby authorized to approve and execute contract amendments and/or supplemental agreements that increase the aggregate contract value for Formal Procurement contracts approved by the Board up to a cumulative amount of 10% or \$250,000.00, whichever amount is lower. Thereafter, Board approval shall be required for any subsequent contract amendments and/or supplemental agreements, unless otherwise provided by the Board. This approval and execution authority shall be in addition to any allowances the Board may have already approved as part of the contract.
- (D) Amendments that change the substance of the procurement contract's terms and conditions, other than increases in amount and time as provided for in this Section, must be reviewed and receive the sign-off of the General Counsel or their designee.

10.24.2 Extensions/Renewals

- (A) The Procurement Director is hereby authorized to approve and execute extensions and/or renewals of the term of any procurement contract, so long as so-doing is either at no additional increase in the aggregate contract award value or such extension and/or renewal is additionally in compliance with the provisions of **Subsection 10.24.1: Amendments** above.

- (B) Should there be no remaining renewal periods on a procurement contract's term, an extension may be for additional time only, and only for the reasonable time needed to procure a new contract in compliance with the provisions of this Procurement Policy, unless otherwise approved by the Board.
- (C) The decision to renew and/or extend a procurement contract or to request that the Board renew and/or extend contract shall be made by the appropriate management-level personnel of the purchasing user department in consult with the Procurement Director.

Adopted: 2024-440.

Section 10.25 Termination of Contract

- 10.25.1 The Executive Director or any applicable Division Chief is authorized to terminate any procurement contract entered into by CFX with any contractor so long as such termination is in compliance with the terms and conditions of such contract and applicable law.
- 10.25.2 The necessary actions for effectuating such termination shall be coordinated with the General Counsel and the Procurement Director.

Adopted: 2024-440.

END OF ARTICLE 1

Division I: General Provisions

Section 10.26 Title

The provisions of this Article shall be known and cited as the **“Protest Resolution Policy”**.

Section 10.27 Authority

- 10.27.1 The Central Florida Expressway Authority (**“CFX”**) is empowered by Chapter 348, Part III, Florida Statutes, to acquire, hold, construct, improve, maintain, and operate the Central Florida Expressway System, and is further authorized to make contracts and to execute all instruments necessary and convenient for conducting its business.
- 10.27.2 As an expressway authority pursuant to Chapter 348, Florida Statutes, CFX is expressly excluded from the definition of “agency” under Section 120.52, Florida Statutes, and therefore is not subject to the uniform rules of procedure for the resolution of protests arising from the contract solicitation or award process provided in Chapter 120, Florida Statutes.

Section 10.26 Statement of Policy

- 10.26.1 The Governing Board (**“Board”**) of CFX hereby establishes this Protest Resolution Policy for the purpose of providing an administrative process through which each Respondent shall be able to, for review and consideration by CFX, raise good faith allegations of any omissions, errors, or mistakes were made during CFX’s evaluation of its own or another Respondent’s Solicitation Response that detrimentally impacted the Respondent.
- 10.26.2 Failure of a Contractor to timely file a Solicitation Response for a particular Procurement Solicitation shall be considered a waiver by such Contractor of any right it has or might have to protest any decision or other action taken by CFX regarding such Procurement Solicitation (e.g., CFX’s decision to issue an award of the underlying project, to reject a Solicitation Response, and/or to cancel the Procurement Solicitation, etc.).
- 10.26.3 There shall be no right to protest the specifications, terms, or contents of a Procurement Solicitation granted under this Protest Resolution Policy. Instead, Contractors and/or Respondents having concerns or questions regarding the specifications, terms, or contents of the Solicitation Documents of any particular Procurement Solicitation, in lieu of protesting, are required to use such Procurement Solicitation’s provided question-and-answer period to raise any such issues or concerns which may then be addressed by CFX by issuance by Addendum.
- 10.26.4 There shall be no right to protest any procurement related action or decision made by CFX other than the rights expressly granted by the Board in this Protest Resolution Policy, which shall apply only to Formal Procurements (as defined in **Subsection 10.10.4: Formal Procurements of Article 1: Procurement Policy** of this Chapter). A protest shall only be valid if submitted in accordance with this Article.

- 10.26.5 Nothing in this Article may be construed as limiting CFX's ability to enter into a mutually agreed upon settlement with a Protesting Respondent at any time.
- 10.26.6 Communications to any CFX Board Member, Chief Officer, employee, and/or any Selection Committee member during an ongoing protest shall at all times be limited to those specifically permitted in **Article 3: Lobbying Blackout Period** of this Chapter.

Section 10.27 Definitions

- 10.27.1 Unless otherwise expressly provided in this Article, the definitions found throughout Articles 1 and 3 of this Chapter are hereby incorporated into this Article.
- 10.27.2 Additionally, wherever used in this Article, the following terms shall have the following meanings indicated, unless context provides otherwise, and such meanings will apply to both the singular and plural thereof:
- (A) **“Addendum”** shall mean a change, clarification, or correction in the Solicitation Documents issued by CFX prior to the closing of the applicable Procurement Solicitation's submittal period.
 - (B) **“Day”** shall mean one calendar day, unless otherwise specifically referred to as a **“business day”**.
 - (1) A **“business day”** shall mean any day that is an official working day of CFX and excludes Saturdays, Sundays, and CFX-designated holidays.
 - (2) When pluralized, **“days”** and **“business days”** shall mean consecutive calendar or consecutive business days.
 - (3) When any period of time is referred to in this Article by either **“days”** or **“business days”**, it shall be computed to exclude the first day or business day and include the last day or business day of such period.
 - (4) If a period of time is determined by calendar days and the last day of such period falls on a Saturday, Sunday, or CFX-designated holiday, such day shall be omitted from the computation.
 - (C) **“Contractor”** shall have the same meaning as provided in **Subsection 10.4.1(C)** of **Article 1: Procurement Policy** of this Chapter.
 - (D) **“Procurement Solicitation”** shall mean the method of procurement used by CFX for to invite Contractors to submit a Solicitation Response for Formal Procurements, including without limitation:
 - (1) **“Invitations to Bid”** (**“ITB”**) shall mean the method of procurement by which CFX solicits sealed competitive bids from Contractors;
 - (2) **“Requests for Proposals”** (**“RFP”**) shall mean the method of procurement by which CFX solicits sealed competitive proposals from Contractors; and
 - (3) **“Requests for Qualifications”** (**“RFQ”**) shall mean the method of procurement by which CFX solicits Contractor qualifications, which may or may not result in an ITB or RFP being issued.

- (E) “**Protesting Respondent**” shall mean a Respondent who files a protest in compliance with this Article.
- (F) “**Respondent**” shall mean a Contractor who timely submitted a Solicitation Response to a Procurement Solicitation issued by CFX.
- (G) “**Solicitation Documents**” shall mean the documents issued by CFX to solicit Solicitation Responses and any related documents (e.g., ITB package, RFP package, RFQ package, etc.), including without limitation any documents therein incorporated or attached thereto.
- (H) “**Solicitation Response**” shall mean a bid, proposal, letter of intent, request for qualifications, or other applicable response submitted by a Contractor or Respondent in response to a Procurement Solicitation issued by CFX.

Division II: Filing a Protest

Section 10.28 Generally

- 10.28.1 After CFX completes its evaluation of each Solicitation Response timely received, the Procurement Director shall, in compliance with the Procurement Policy, the Procurement Procedures Manual, and applicable Solicitation Documents, complete one of the following actions:
- (A) In the event the Procurement Solicitation is an Invitation to Bid, issue a Notice of Award to the lowest responsible and responsive Respondent (or, in the event of multiple awards Respondents);
 - (B) In the event the Procurement Solicitation is not an Invitation to Bid, issue a Notice of Recommendation of Award to the Respondent (or, in the event of multiple awards Respondents); or
 - (C) Cancel the Procurement Solicitation.
- 10.28.2 The Procurement Director shall ensure the applicable Notice of Award or Notice of Recommendation of Award for each Procurement Solicitation allows for a period of no fewer than 13 calendar days to conclude prior to any requisite request for Board approval is made or granted.

Section 10.29 Standing and Exclusions

- 10.29.1 **Standing.** Standing to protest an award or recommendation of award is limited solely to Respondents who:
- (A) Submitted a timely Solicitation Response to the Procurement Solicitation under which such award or recommendation of award was noticed by CFX; and
 - (B) Have good faith allegations that:
 - (1) An omission, error, or mistake was made during CFX’s evaluation of its own or another Respondent’s Solicitation Response; and
 - (2) Such omission, error, or mistake detrimentally impacted the Respondent.

10.29.2 **Exclusions.** The following situations shall not be the basis for a protest:

- (A) Any decision by CFX to refuse to consider a Solicitation Response received beyond the date/time established in the applicable Solicitation Documents; and
- (B) Any decision by CFX to cancel a Procurement Solicitation.

10.29.3 **Timely Filing; Waiver of Protest Right.** The timely filing of a Notice of Protest, Written Protest, and/or any requisite protest bonds shall be jurisdictional requirements. Failure by a Respondent to timely file a Notice of Protest, Written Protest, and/or any requisite protest bonds shall constitute an irrevocable waiver of any right such Respondent has or may have to protest and/or challenge an applicable award or recommendation of award.

Section 10.30 Protest Requirements

10.30.1 Notice of Protest

- (A) Any Respondent seeking to protest an award or recommendation of award must file a valid written notice to CFX of its intention to file such a protest (“**Notice of Protest**”) no later than 3 calendar days from the date of CFX’s posting of the applicable Notice of Award or Notice of Recommendation of Award (“**Protest Notice Period**”).
- (B) To be valid, each Notice of Protest must:
 - (1) Be written and submitted to CFX by:
 - (a) Certified mail return receipt requested;
 - (b) National courier service with overnight delivery guaranteed; or
 - (c) Electronic mail to the email address provided in the applicable Solicitation Document or, should the Solicitation Document not provide such email, to the email address provided by the Procurement Department upon request.
 - (2) Be timely filed and actually received by the Procurement Director with copy to CFX General Counsel prior by 11:59pm eastern time on the 3rd calendar day of the Protest Notice Period – postmark dates will not be contemplated;
 - (3) Identify the Protesting Respondent;
 - (4) Specify the applicable Procurement Solicitation number;
 - (5) Provide a detailed summary of the basis of the protest; and
 - (6) Include an accompanying protest bond in compliance with the requirements of **Subsection 10.30.3: Protest Bond Requirements** below.
- (C) Additionally, the Protesting Respondent must:
 - (1) Mail a copy of its Notice of Protest to all other Respondents; and
 - (2) Include evidence of such mailing in its Notice of Protest filing to CFX.

10.30.2 Written Protest

- (A) A Protesting Respondent having timely filed a valid Notice of Protest is a precondition to their filing of a valid Written Protest.

- (B) The Protesting Respondent shall file a valid formal written statement of protest (“**Written Protest**”) no later than 10 calendar days after its filing of the required Notice of Protest (“**Protest Filing Period**”).
- (C) To be valid, the Written Protest must:
 - (1) Be written and submitted to CFX by:
 - (a) Certified mail return receipt requested;
 - (b) National courier service with overnight delivery guaranteed; or
 - (c) Electronic mail to the to the email address provided in the applicable Solicitation Document or, should the Solicitation Document not provide such email, to the email address provided by the Procurement Department upon request.
 - (2) Be timely filed and actually received by the Procurement Director with copy to CFX General Counsel prior by 11:59pm eastern time on the 10th calendar day of the Protest Filing Period – postmark dates will not be contemplated;
 - (3) Identify the Protesting Respondent;
 - (4) Specify the applicable Procurement Solicitation number;
 - (5) State with specificity and particularity both the facts and law upon which the protest is based, specifying the exact nature of any claimed error, omission, mistake, or incorrect evaluation or scoring of a Solicitation Response;
 - (6) Include any and all information, documentation, and/or evidence the Protesting Respondent believes supports their protest; and
 - (7) Specifically identify the relief to which the Protesting Respondent deems itself entitled.
- (D) Additionally, the Protesting Respondent must:
 - (1) Mail a copy of its Written Protest to all other Respondents; and
 - (2) Include evidence of such mailing in its Written Protest filing to CFX.

10.30.3 **Protest Bond Requirements**

- (A) A protest bond must be simultaneously filed with each Notice of Protest filed with CFX.
- (B) The amount of the required bond shall be as set forth in shall be calculated as follows:
 - (1) If the Notice of Protest is in relation to an Invitation to Bid, 1% of the lowest bid submitted or \$5,000.00, whichever is greater; or
 - (2) If the Notice of Protest is in relation to a solicitation other than an Invitation to Bid, 1% of CFX’s estimated value of the award or \$5,000.00, whichever is greater.
- (C) A separate protest bond must be posted by each Protesting Respondent.
- (D) Each protest bond must:
 - (1) State on its front page:

- (a) The name, principal business address, and phone number of the protesting Respondent, the surety, and CFX; and
 - (b) The bond number assigned by the surety.
- (2) Be made payable to the “Central Florida Expressway Authority”;
- (3) Be signed and sealed by the Protesting Respondent and a surety insurer authorized to do business in the State of Florida as surety;
- (4) Be countersigned by the Florida resident agent of the surety;
- (5) Have a surety power of attorney attached that is executed under the surety’s corporate seal; and
- (6) Be conditioned upon all of the following:
 - (a) Each protest bond shall be conditioned upon the payment of all costs which may be adjudged against the Protesting Respondent in the administrative hearing in which the action is brought and any subsequent appellate court proceeding.
 - (b) If, after completion of the administrative hearing process and any appellate court proceedings, CFX prevails, it shall recover all costs and charges which shall be included in the final order or judgment, excluding attorney’s fees. Upon payment of such costs and charges by the Protesting Respondent, the bond shall be returned to them.
 - (c) If the Protesting Respondent prevails, it shall be entitled to recover from CFX only those damages and/or costs provided in **Subsection 10.33.4** below.
 - (d) The entire amount of the bonds shall be forfeited if it is determined by the Administrative Hearing Officer or a court of competent jurisdiction that the protest or any subsequent appeal was:
 - 1. Clearly insufficient on its face; and/or
 - 2. Filed for a frivolous or improper purpose, including but not limited to the purpose of harassing, causing unnecessary delay, or causing needless cost for CFX or other parties.
- (7) Bind the Protesting Respondent and surety, their heirs, legal representative, successors, and assigns, jointly and severally, and be conditioned upon the satisfaction of any cost and charges included in a final decision or judgement, including appellate court proceedings, in the event CFX prevails.
- (E) All protest bonds must be identical in form to the Bid Protest Bond form approved by CFX, which shall be posted on CFX’s website and may otherwise be obtained from the Procurement Director upon request.
- (F) CFX shall be the prevailing party if the Protesting Respondent withdraws the protest at any time before entry of the final decision or judgement. The foregoing notwithstanding, the Executive Director, in consult with General Counsel, is hereby authorized to waive CFX’s claim to any such protest bond upon withdraw of the Protesting Respondent, should the Executive Director deem so doing to be in CFX’s best interests.

Division III: Protest Review Process

Section 10.31 Resolution by Procurement Director

- 10.31.1 Upon receipt of a valid Written Protest, the Procurement Director will review such Written Protest and either:
- (A) Draft and issue a final written decision to Respondent based on the contents of the Written Protest and thereafter post such final written decision to all Respondents; or
 - (B) Schedule a public meeting, in compliance with Section 286.011, Florida Statutes, with the Protesting Respondent to attempt to resolve the protest (“**Protest Resolution Meeting**”).
 - (1) A notice establishing the date, time, and location for the Protest Resolution Meeting shall be posted to all Respondents. Any Respondents that may be detrimentally impacted should the Protesting Respondent be successful shall be provided the opportunity to participate in such public meeting.
 - (2) After the Protest Resolution Meeting, the Procurement Director shall draft and issue a final written decision to the Respondent and thereafter post such final decision to all Respondents.
- 10.31.2 Nothing in this Section may be construed as preventing CFX from exercising its right to cancel the Procurement Solicitation at any time for any reason.

Section 10.32 Resolution by Administrative Hearing

10.32.1 Administrative Appeal

- (A) The Protesting Respondent shall have 3 business days from the date of its receipt of the Procurement Director’s written decision to appeal the Procurement Director’s decision for review by an Administrative Hearing Officer (“**Administrative Appeal Period**”). The standard of review of any such Administrative Appeal shall be limited to abuse of discretion by CFX.
- (B) For such an Administrative Appeal to be valid, it must:
 - (1) Be written and submitted to CFX by:
 - (a) Certified mail return receipt requested;
 - (b) National courier service with overnight delivery guaranteed; or
 - (c) Electronic mail to the to the email address provided in the applicable Solicitation Document or, should the Solicitation Document not provide such email, to the email address provided by the Procurement Department upon request.
 - (2) Be timely filed and actually received by the Procurement Director with copy to CFX General Counsel prior by 11:59pm eastern time on the 3rd business day of the Administrative Appeal Period – postmark dates will not be contemplated;
 - (3) Identify the Protesting Respondent;

- (4) Specify the applicable Procurement Solicitation number;
 - (5) State with specificity and particularity both the facts and law upon which the appeal is based, specifying the exact manner as to how CFX abused its discretion in rendering its final written decision;
 - (6) Include any and all information, documentation, and/or evidence the Protesting Respondent believes supports its appeal; and
 - (7) Specifically identify the relief to which the Protesting Respondent deems itself entitled.
- (C) Additionally, the Protesting Respondent must:
- (1) Mail a copy of its Administrative Appeal to all other Respondents; and
 - (2) Include evidence of such mailing in its Administrative Appeal filing to CFX.
- (D) The timely filing of a valid Appeal for Administrative Hearing is a jurisdictional requirement and failure to timely file such appeal constitutes a waiver of any right a Respondent has or may have to protest and/or challenge an applicable award or recommendation of award.

10.32.2 Administrative Hearing Officer

- (A) Should the Protesting Respondent file a timely and valid Administrative Appeal, such appeal, and any written response provided by CFX, shall be considered by an Administrative Hearing Officer selected and compensated by CFX. Such Administrative Hearing Officer must meet the following qualification requirements:
- (1) They must be an independent third-party with applicable experience (e.g., as an attorney, mediator, hearing officer, arbitrator, special magistrate, judge, etc.); and
 - (2) They must submit a **CFX-110: Potential Conflict Disclosure Form** to CFX prior to hearing any appeal.

10.32.3 Conduct of Administrative Hearing

- (A) The Administrative Hearing Officer shall regulate the course of proceedings to assure orderliness and a fair opportunity for each side to present its case. The formal rules of evidence shall not apply and hearsay shall be admissible but shall not serve as the primary basis of the Hearing Officer's final order.
- (B) The Administrative Hearing Officer shall base their final order on such evidence adduced in the course of the proceedings as would be relied upon by reasonable, prudent persons in the conduct of their affairs.
- (C) The Administrative Hearing Officer shall conduct an impartial, public hearing no later than 10 business days after their appointment; however, in the event that the Administrative Hearing Officer believes that more time is necessary, they may reasonably extend such time in writing sent to all parties, with copies to the Procurement Director and CFX General Counsel. Upon receipt of any such extension, the Procurement Director shall post it to all Respondents.
- (D) The parties to the hearing may be represented by counsel and both sides shall be granted the opportunity to present oral, physical, and/or documentary evidence relevant to all issues properly raised in the Administrative Appeal.

- (E) Any Respondents that may be impacted should the Protesting Respondent be successful shall be provided the opportunity to participate in the public hearing, may be represented by counsel, and shall be presented the opportunity to present oral, physical, or documentary evidence relevant to all issues impacting such Respondent.
- (F) Within 5 business days after the hearing is concluded, the Administrative Hearing Officer shall submit their final decision to all parties, with copies to the Procurement Director and CFX General Counsel.

Section 10.33 Resolution by Judicial Appeal

10.33.1 Requisite Notice of Judicial Appeal

- (A) The Protesting Respondent and CFX shall each have 5 business days to submit written notice to the other of their intention to appeal the final written decision of the Administrative Hearing Officer (“**Judicial Appeal Notice Period**”).
- (B) For a Notice of Judicial Appeal filed by a Protesting Respondent to be valid, it must be written and submitted to the other party by:
 - (1) Certified mail, return receipt requested; or
 - (2) National courier service with overnight delivery guaranteed.
- (C) Should such notice not be timely received by the other party by 5:00pm eastern time on the last business day of the Judicial Appeal Notice Period, the decision of the Administrative Hearing Officer shall be binding and final and any right of either party to appeal the matter to the Circuit Court shall be considered irrevocably waived.

10.33.2 Judicial Appeal

- (A) The standard of any Judicial Appeal shall be abuse of discretion by the Administrative Hearing Officer.
- (B) Judicial review of any final decision made by the Administrative Hearing Officer shall be by certiorari in the Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida, and filed with the appropriate Circuit Court no later than 30 calendar days after the date of the Administrative Hearing Officer’s final written decision.

10.33.3 The pendency of judicial review proceedings shall not stay the procurement process, nor the award of a contract, unless a temporary injunction is issued by the Circuit Court, or unless CFX determines it is in the best interest of CFX to temporarily or permanently delay the procurement process or contract award.

10.33.4 If any court or other proceedings upholds the Protesting Respondent’s appeal, the Protesting Respondent’s damages, including court-awarded damages accruing to the Protesting Respondent or any other party, shall be limited solely to:

- (A) The Protesting Respondent’s reasonable Solicitation Response preparation costs;
- (B) The amount of the protest bond premium paid by the Protesting Respondent, if any; and
- (C) Reasonable court fees and costs paid by the Protesting Respondent.

10.33.5 Under no circumstances shall CFX be held liable to a Protesting Respondent for any damages or costs (e.g., attorney’s fees, expert witness, etc.), other than those provided in **Subsection 10.33.4** above, regardless as to the theory of law and/or equity under which such claim for damages or costs may be made.

Section 10.34 Publication for Procurement Solicitations

10.34.1 A copy of this Article will be posted on the CFX website (<https://www.cfxway.com>) and referenced within all Solicitation Documents that are generated and distributed by the CFX.

.....| **END OF ARTICLE 2**

Division I: General Provisions

Section 10.35 Title

The provisions of this Article shall be known and cited as the “**Lobbying Blackout Policy**”.

Section 10.36 Authority

10.36.1 In accordance with Section 348.754(2)(m), Florida Statutes, the Central Florida Expressway Authority (“**CFX**”) is authorized to “. . . do everything necessary or convenient for the conduct of its business and the general welfare of the authority, in order to comply with [Chapter 348.754, Part III, Florida Statutes] or any other law.”

Section 10.37 Statement of Policy

10.37.1 The Governing Board (“**Board**”) of CFX hereby establishes this Lobbying Blackout Policy for the purpose of protecting the transparency, fairness, and integrity of CFX’s procurement of goods and services.

Section 10.38 Definitions

10.38.1 Unless otherwise expressly provided in this Article, the definitions found throughout Articles 1 and 2 of this Chapter are hereby incorporated into this Article.

10.38.2 Wherever used in this Article, the following terms shall have the following meanings indicated, unless context provides otherwise, and such meanings will apply to both the singular and plural thereof:

- (A) “**Lobbyist**” shall mean any person (e.g., individual, entity, legal counsel, etc.) who, on behalf of and for the benefit of themselves, their employer, principal, client, or any other person, engages in Lobbying activities with the intent of influencing CFX’s decision related to an ongoing or pending Formal Procurement.
- (B) “**Lobby**” shall mean communicating in any manner (e.g., oral, writing, etc.) by a Lobbyist with CFX Board Members, Chief Officers, employees, and/or Selection Committee members directly or indirectly in connection with any Formal Procurement in an effort to influence the decision of such Board Members, Chief Officers, employees, and/or Selection Committee members in connection with said such Procurement.
- (C) “**Selection Committee**” shall mean the committee established pursuant to the Procurement Procedures Manual, and/or other applicable law or regulation, for the purposes of:
 - (1) Evaluating the Solicitation Responses received by CFX in response to a Procurement Solicitation; and

- (2) Based on such evaluation, recommending to the Procurement Director, or the designee thereof: (a) the shortlisting of certain Respondents; and/or (b) the award of a contract to the highest ranked Respondent (or, in the case of multiple awards, Respondents).

Section 10.39 Prohibition of Lobbying

- 10.39.1 No Contractor or Respondent may engage in any effort, either directly or indirectly, to Lobby or in any manner influence the actions of any CFX Board Member, Chief Officer, employee, and/or any Selection Committee member in respect to a pending award of contract for which a Procurement Solicitation was issued, except as set forth in **Section 10.40: Exceptions to Policy** below.
- 10.39.2 Any attempt by any Contractor or Respondent to communicate with any CFX Board Member, Chief Officer, employee, and/or any Selection Committee member in connection with any pending award of a contract for which a Procurement Solicitation has been issued shall, unless otherwise excepted herein, be considered a violation of this Article, and may be punishable by such Contractor or Respondent being suspended from being able to compete in any CFX Procurement Solicitation for no less than 2 years.

Section 10.40 Exceptions to Policy

- 10.40.1 The above Prohibition of Lobbying shall not apply in the following instances:
- (A) Any communication expressly permitted in the procurement process for the Procurement Solicitation in question, such as communicating with the CFX employee who has been identified in the applicable Solicitation Documents as being the person to contact in connection with said Procurement Solicitation.
 - (B) Any communication that occurs on the record at a public meeting held in compliance with Section 286.011, Florida Statutes.
 - (C) Any communication expressly required or strictly necessary to submit a protest in compliance with the requirements of **Article 2: Protest Resolution Policy** of this Chapter.

Section 10.41 Publication for Procurement Solicitations

- 10.41.1 A copy of this Article will be posted on the CFX website (<https://www.cfxway.com>) and referenced within all Solicitation Documents that are generated and distributed by the CFX.

END OF ARTICLE 3