



3201 Sidney Brooks
San Antonio, TX 78235
(210) 678-3300
livebrooks.com

Brooks Development Authority Procurement Policy

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Title: Procurement Policy

Policy: It is the responsibility of all Brooks Development Authority (BDA) employees to plan their projects and workloads in such a manner that sufficient time is allowed for the acquisition of materials and supplies, construction, and professional services in accordance with applicable public laws and the guidelines established by the BDA.

BDA's procurement process must comply with all applicable local, state, and federal regulations. Any deviation from this policy must receive prior input from legal counsel, and approval from the BDA President & CEO or his designee.

BDA is a Defense Base Authority and Political Subdivision of the State of Texas established by the City of San Antonio as authorized under Texas Law for the purpose of redeveloping Brooks Air Force Base. Accordingly, the BDA is not an agency of the City of San Antonio but a separate political subdivision of the State, BDA is subject to various provisions of Chapter 379B and 271 of the Texas Local Government Code and Chapter 2267 of the Texas Government Code. In addition, BDA is subject to the Open Meetings Act, Texas Government Code Chapter 551, as amended and Public Information Act, Texas Government Code, Chapter 552. **When caring out activities funded by other units of Federal, State or Local governments, BDA is required to act in accordance with laws, rules, and regulations attendant to other funds.**

Purpose: To establish guidelines for the procurement of material, supplies and professional services.

Scope: This Policy applies to all BDA employees to adhere to the guidelines in the procurement of materials, supplies, and professional services.

I. ADMINISTRATION

A. General

All procurement transactions shall be administered and monitored by the BDA's Procurement Manager, who shall be the President & CEO's designee. The Procurement Manager shall issue a more detailed operating '**Procurement Procedures**' to implement this procurement policy. These procedures will be reviewed and amended from time to time by the Procurement Manager and approved by the President & CEO and/or Chief Financial Officer as needed to incorporate

recommendations of the BDA Board and staff and any legislative or regulatory changes. The Procurement Procedures should reflect the specific requirements and general intent of the Board adopted Procurement Policy. Therefore, any modifications or amendments by the Procurement Manager to the procedures that propose a change in the Procurement Policy must be approved by the Board prior to the new procedures being implemented.

B. Procurement Manager Responsibilities

The Procurement Manager shall ensure that:

1. Procurement requirements are subject to a prioritized planning, packaging and grouping process to ensure efficient and economical purchasing while encouraging accomplishment of local and SMWBE goals for work distribution;
2. All contracts shall comply with any and all applicable local, state, and federal laws, rules and regulations;
3. Procurements shall not be awarded to debarred, suspended, or ineligible contractors and service providers.

C. Types of Contract and Contract Clauses

The BDA will utilize the type of contract that is appropriate to the procurement and promotes the best interest of the BDA, so long as all applicable federal, state, and local regulations are taken into consideration. The Procurement Manager shall coordinate with BDA management and staff in their preparation of procurement strategies for significant contracting actions.

D. Contract Administration

The Procurement Manager, or designee, shall be responsible for processing and controlling purchase requests, coordinating solicitation documents with appropriate management staff, advertising, receiving solicitations, researching solicitation data and facts, preparing decisions, processing approvals and denials, distribution of packages, executing purchase orders, coordinating contract execution and administering contracts.

The Procurement Manager shall establish standard form contracts as appropriate for various forms of procurement. Any contract that deviates from the approved standard form must be reviewed by BDA's legal counsel.

E. Contracting Authority

The BDA Board has established the spending authority of the President & CEO, to include the authority for awarding of contracts and change orders to be no greater than \$250,000.

BDA may approve changes in plans or specifications that are necessary after the performance of the contract has begun or if it is necessary to decrease or increase the quantity of work to be performed in accordance with state law.

The total contract price may not be increased because of the changes unless additional money for increased costs is appropriated by the Board for that purpose from available funds. The BDA Board grants the President and CEO the authority to approve contingency:

1. Up to ten (10%) percent of the value of the construction contract up to \$250,000, without additional Board approval;
2. Contingency requests from \$250,001 up to \$500,000 require Executive Committee approval with ratification by the Board at the next meeting; and
3. All contingency requests in an amount exceeding \$500,001 require Board approval.

Additionally the Board shall be apprised of any modifications to the original contract. The modifications must be within the original scope of work under the contract and the work must be awarded to the original contractor and/or subcontractor(s).

F. Commitment of Funds

The BDA Board and President & CEO or designee, are responsible for determining adequacy of funds and appropriating funds for all contracts.

G. Insurance Requirements

BDA will solicit bids, proposals and qualifications that will contain insurance requirements. The insurance requirements will be listed in the specific solicitation. Prior to the commencement of any work under any BDA contract, the contractor shall furnish an original completed Certificate(s) of Insurance: (1) listing the BDA as an additional insured and (2) by insurance companies authorized and admitted to do business in the State of Texas with an A.M. Best's rating of no less than A- (VII), to the Procurement Manager. BDA shall have no duty to pay or perform under the contract until such certificate has been delivered to the Procurement Manager. No officer or employee, other than the President & CEO, shall have authority to waive this requirement. BDA reserves the right to review the insurance requirements of the contract during the effective period of the contract and modify insurance coverages and their limits when deemed necessary and prudent by the Procurement Manager based upon changes in statutory law, court decisions, or circumstances surrounding the contract.

H. Contractor Performance Measures and Retainage

All work performed by a BDA contractor shall be performed to the satisfaction of BDA. The determination made by the designated BDA representative, shall be final, binding and conclusive on all Parties. BDA shall be under no obligation to pay for any work performed by Contractor, which is not satisfactory to BDA. BDA shall have the right to terminate this contract, in whole or in part, should Contractor's work not be satisfactory. A minimum retainage of 5% and maximum of 10% shall be required for on all construction services contracts \$100,000 or more.

II. GENERAL PROVISIONS

A. Full and Open Competition

The BDA will strive, in accordance with applicable State and Federal law, to have either two or more responsive and responsible written bids, responses to RFQs (Request for Qualifications), RFPs (Request for Proposal) or CSP's (Competitive Sealed Proposals) in accordance with Section III of this policy, in order to provide a full and open competition for

materials, supplies, maintenance services, construction services, and professional/personal/technical services.

BDA always reserves the right to reject any or all bids, proposals or quotations for any reason and to cancel or re-advertise the solicitation for work or service. A “memorandum for record” must document final disposition and be placed in the acquisition file.

B. Small, Minority, Women Owned, and Local Business Enterprises

All solicitations advertised and all contracts signed by the BDA shall include the following statement:

It is the policy of the BDA to encourage involvement of qualified Small, Minority, Women-Owned Business Enterprises (SMWBE) and Local Business Enterprises in soliciting and awarding competitive contracts in accordance with the specific goals adopted by the BDA Board of Directors:

Percentages represented below are percentages of contract dollar values for prime and sub-prime firms:

| Contracting Category | Goal |
|--|-------------|
| <u>Overall</u> | |
| Small Business Enterprise | 50.00% |
| Minority-Owned Business Enterprise | 31.00% |
| Women-Owned Business Enterprise | 10.00% |
| African-American Owned Business Enterprise | 2.20% |
| | |
| <u>Construction</u> | |
| Small Business Enterprise | 50.00% |
| Minority-Owned Business Enterprise | 24.00% |
| Women-Owned Business Enterprise | 11.00% |
| African-American Owned Business Enterprise | 1.50% |
| | |
| <u>Purchasing</u> | |
| Small Business Enterprise | 50.00% |
| Minority-Owned Business Enterprise | 15.00% |
| Women-Owned Business Enterprise | 10.00% |
| African-American Owned Business Enterprise | 3.00% |
| | |
| <u>Professional Services/Other Services</u> | |
| Small Business Enterprise | 50.00% |
| Minority-Owned Business Enterprise | 31.00% |
| Women-Owned Business Enterprise | 10.00% |
| African-American Owned Business Enterprise | 2.20% |

Definitions:

BDA recognizes certifications from the South Central Texas Regional Certifications Agency (SCTRCA). The following are recognized certifications:

African American Business Enterprise (AABE): a sole proprietorship, partnership or corporation owned, operated and controlled by an African American Group member(s) who has at least 51% ownership. The African American group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories.

Disadvantaged Business Enterprise (DBE): a small business concern, as defined pursuant to Section 3 of the Small Business Act and implementing regulations, which is owned and controlled by one or more disadvantaged individuals. Owned and controlled means a business, which is at least 51% owned by one or more socially and economically disadvantaged individuals. In the case of any publicly owned business, at least 51% of the stock must be owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Historically Underutilized Business (HUB): a sole proprietorship, partnership or corporation, operated and controlled by a 51% owner that is an Asian Pacific American, African American, Hispanic American, Native American and/or American woman; is a for-profit entity that has not exceeded the size standards prescribed by 34 TAC 20.23, and has its principal place of business in Texas, and has an owner residing in Texas with a proportionate interest that actively participates the entity's affairs.

Local Business (LB): a corporation, partnership, sole proprietorship, or other legal entity, which is headquartered or has a significant presence for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based.

BDA may allocate a maximum of twenty (20) selection points for SMWBE and local business participation and may include a maximum of ten (10) selection points for Local Business participation.

- Prime firms meeting the definition of a Local Business shall receive ten percent (10%) of the selection points.
- Prime firms who have a local presence but do not meet the 20% employee threshold shall receive five percent (5%) of the selection points.
- Non-Local prime contractors shall receive selection points for subcontracting with local businesses proportional to the amount of work performed by those local subcontractors/suppliers (i.e., 50% to local — 5 points)

Minority Business Enterprise (MBE): a sole proprietorship, partnership or corporation owned, operated, and controlled by a minority group member(s) who has at least 51% ownership. The minority group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories.

(A) Group Member(s) — There are five ethnic categories into which group members may fall in accordance with the Small Business Administration's identifiers. {Small Business Act 2(f)(1)(A)(B)(C)} They are African Americans, Hispanic Americans, Asian Americans, and Native Americans legally residing in or that are citizens of the United States of America or its territories. Within these categories, the following classifications are recognized in this region through the Regional Certification Agency:

1. African American: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian or West Indian.
2. Hispanic American: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central or South American origin.
3. Asian-Pacific American: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
4. Asian-Indian American: Persons whose origins are from India, Pakistan, Bangladesh, Sri Lanka, Maldives Islands, Bhutan, or Nepal.
5. Native American: Persons having no less than 1/16 percentage origin in any other American Indian Tribes, as recognized by the United States Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents, to include persons who are Eskimos, Aleuts, or Native Hawaiians.

Note: The City of San Antonio does not recognize Eskimos, Aleuts or Native Hawaiians within its definition of Native American.

Small Business Enterprise (SBE): a business structure that is formed with the purpose of making a profit, which is independently owned and operated and which meets the United States Small Business Administration (SBA) size standard for a small business (refer to <http://sba.gov/size> click table).

Woman Owned Business Enterprise (WBE): A sole proprietorship, partnership or corporation owned, operated, and controlled by one or more women who have a total of at least 51% or more ownership.

The BDA Board of Directors may also adopt additional Small Business Enterprise (SBE) goals for specific projects and/or specific areas of work in order to present opportunities for all small business in the region. The Procurement Manager shall provide recommended goals for small businesses for specific projects and/or areas of work to the BDA Board of Directors as part of the annual budget.

C. Conflict of Interest

The BDA Board of Directors must comply with the City of San Antonio Ethics Rules and any other BDA board policies adopted. BDA employees shall comply with the BDA Personnel Rules as approved by the Board.

D. BDA Board of Directors

The Procurement Manager shall at Budget approval and as requirements otherwise arise provide a list to the BDA Board of Directors of all Requests for Proposals (RFP), Request for

Qualifications (RFQ), Competitive Sealed Proposals (CSP), Bids and all other solicitations anticipated to be over \$100,000. (Unanticipated requirements over \$100,000 should be reviewed by the Finance Committee). The Board or one of its designated Committees may do the following:

1. Request detailed information on the procurement procedure BDA staff will be utilizing to select the provider of services before the solicitation is issued.
2. Request modifications to the procurement procedure, timeline, scoring matrix or the selection criteria as proposed by BDA staff.

Contract Renewal Process:

The BDA will continue the formal process of awarding contracts with an initial three-year term and two one-year renewal option if mutually agreeable to BDA and the Contractor. The BDA Board must approve the funds through the budget process.

E. Community Outreach

The Procurement Manager shall manage a community business outreach program that will consist of the following minimum initiatives:

1. BDA shall conduct regular awareness seminars to inform local businesses of opportunities at Brooks and the protocol for them to become involved and to increase their exposure to both BDA and BDA tenants.
2. BDA shall maintain a Provider's List that can be used by the Procurement Manager or designee as a resource for identifying potential vendors. This List will be statistical in nature and will not represent "pre-qualified" vendors for procurement which require competition.
3. BDA shall use its website to provide information on how to do business at Brooks and to communicate procurements currently being competed.

III. COMPETITION REQUIREMENTS

A. No Competition

Competition is not required for procurements less than \$50,000. BDA Staff should make reasonable efforts to make such purchases from lowest cost providers and should pursue small business goals when possible.

B. Informal competition

Informal competition is required for procurements of \$50,001 or more but less than \$250,000. BDA Staff should obtain a minimum of three informal bids for such purchases. Exceptions to this must be both allowed by applicable law and justifiable based on the requirement (including consideration of customer needs) and the proposed sourcing. For all informal competitions, BDA will comply with laws related to historically underutilized businesses.

C. Formal competition

Formal competition is required for procurements of \$250,001 or more. Exceptions to this must be both allowed by applicable law and justifiable based on the requirement (including consideration of customer needs) and the proposed sourcing.

D. Evaluation Methods For Formal Competition

- i. For procurements involving an Invitation for Bid (IFB), awards will be based on the lowest cost proposed by a responsible bidder.
- ii. For procurements involving professional and technical services (using an RFQ) as defined by Texas Government Code Chapter 2254, evaluation of responses shall be made based solely on qualifications.
- iii. For personal services (using an RFP), the evaluation of responses may include consideration of cost and overall value to the BDA. These evaluations will be based on clearly communicated criteria that are scored in a manner that results either in one overall, comparative, numerical measure or in a consensus rating among raters.
- iv. For procurements involving construction that is not based on an IFB (using a CSP), BDA must evaluate responses on published criteria (including consideration of cost and overall value to the BDA) and the applicable weighted value for each criterion.

E. Exceptions to Competition Requirements

Exceptions to the Competition Requirements for non-construction procurements may be either required or allowed by applicable law and, if allowed, must be justifiable based on the requirement (including consideration of customer needs) and the proposed sourcing of funds. Any exception to the Informal or Formal Competition Requirements for non-construction procurement that is not the result of legal or contractual requirements must be approved by the President & CEO, or designee, and reported to the Board. For any construction contracts issued by the BDA, no exceptions to Chapter 2269 of the Government Code are recognized except those identified below.

Chapter 379B for a Defense Base Development Authority that requires the use of competitive bidding or competitive sealed proposals for construction projects related to tenant retention allows an exception to competition for “qualifying projects” for real estate projects involving the construction of the following:

- (1) Tenant finish-out or construction of a build-to-suit facility for a tenant who, through the execution of a lease with BDA, pays for or reimburses the BDA for the cost of the improvements;
- (2) Infrastructure improvements, including roads, driveways, or utility extensions, made in connection with the sale or lease of property owned by the BDA and for which the proceeds of the sale or the lease are used to reimburse the Authority for the infrastructure improvements; or

- (3) An income-producing facility that generates revenue for the BDA and that is constructed by a private developer with special expertise in development.

IV. SPECIAL SOLICITATION CONSIDERATIONS

Special Procurement Transactions

BDA may utilize certain specialized procurement transactions, so long as applicable federal, state, and local laws and regulations are followed and as may be allowed by any applicable funding source. **However, for any construction contracts issued by BDA, no exceptions to Chapter 2269 of the Government Code are recognized.**

Bid, Performance, and Payment Bonds

Any bid performance or payment bonds required for projects will comply with the provisions of Chapter 2251 of the Texas Government Code.

Prevailing Wage Rates

1. Davis-Bacon Act Wages

All construction contracts valued at two thousand (\$2,000) dollars or more and utilizing federal funds shall include provisions for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7), and as supplemented by the Department of Labor regulations (29 CFR part 5).

2. Wages in 100% State or Locally Funded Projects

All construction contracts, which utilize BDA operating revenues, state and local funds shall include provisions for compliance with the City of San Antonio Labor Standards Ordinance No.71312.

Indefinite Quantities and Services Contracts

The BDA President & CEO may enter into an Indefinite Quantities Contract (IDQ Contract) for non-professional/personal services with appropriate tiers of unit pricing unless otherwise restricted by a specific funding source or Chapter 2269 of the Government Code.

The use of indefinite, open-ended contracts for professional/technical/personal services may be used following review with the appropriate Board Committee.

General Procurement Appeals Policy

It shall be the BDA's policy to first attempt to resolve all contractual procurement disputes informally at the BDA staff level. A second-tier evaluation may be performed by Senior BDA Management. BDA, alone, is responsible, in accordance with good administrative practice and sound business judgment, for the management of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.