

ARTICLE 1. PROCUREMENT

1.010. PURPOSE

This article is intended to establish procedures to govern the procurement of research and development projects, professional services, supplies, services and construction projects by Alaska Aerospace Development Corporation.

Authority: AS 14.40.866
AS 14.40.871

1.020. GENERAL PROVISIONS

The AADC procurement process will not discriminate because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation. AADC shall maintain a list of contractors who have requested in writing to receive notice of AADC procurement announcements.

Authority: AS 14.40.866
AS 14.40.871

1.030. METHODS FOR PROCUREMENT

(a) Invitation to Bid (ITB). AADC's preferred procurement method is the advertised ITB process.

- 1) the ITB is used to procure (i) non construction-related supplies, services and professional services with an estimated cost greater than \$50,000, and (ii) construction, and construction-related supplies, services and professional services, with an estimated cost greater than \$100,000, that can be obtained through price competition using a bid specification. The specification will describe the requirements;
- 2) an ITB shall be issued to each qualified vendor responding to an advertised notice of ITB or to potential vendors based on a listing of qualified vendors maintained by AADC;
- 3) responses to an ITB will be completed by the vendors per ITB instructions with price quotations and signatures and returned to the AADC office;
- 4) at the designated time, bid packages will be opened and evaluated by AADC to determine the lowest bid. Evaluation results will then be reviewed by the President and CEO for approval prior to the issuance of a contract. Alaska bidders will be accorded a five percent preference on acceptable bids. After approval, the successful bidder will be notified of the award;
- 5) vendors must be advised of the decisions regarding bid awards; the following wording must be included in all bid solicitations: All bids accepted by the AADC are subject to the AADC terms and conditions and any and all terms and conditions submitted by bidders are rejected and shall have no force and effect. Bid tabulation with recommended award will be available for review by interested parties at the location where bids were opened;

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- 6) subcontractors. A list of subcontractors shall be provided either with the bid or prior to contract award. AADC will retain the right to approve or disapprove any change of subcontractors after contract award;
- 7) bid security, as follows:
 - (A) bid security may be required for any competitive sealed bidding at AADC's sole discretion;
 - (B) bid security must be in an amount and a form satisfactory to AADC;
 - (C) when the invitation to bid requires security, AADC will reject a bid that does not comply with the material terms of the bid security requirement;
- 8) public notice of ITB as follows:
 - (A) AADC will give public notice of the ITB at least 14 days before the date for the opening of bids; if a determination is made in writing that a shorter notice period is necessary for a particular bid, the 14-day period may be shortened; the time and manner of notice must be in accordance with AADC procedures; when practicable, notice may include:
 - (i) Publication in a newspaper calculated to reach prospective bidders;
 - (ii) notices posted in public places within the area where the work is to be performed or the material furnished; and
 - (iii) notices mailed to all active prospective contractors on the appropriate list maintained by AADC;
 - (B) the bids are not open for inspection until after the notice of intent to award a contract is given, to the extent the bidder reasonably designates, trade secrets and other proprietary data contained in a bid document are confidential;
- 9) Bid Acceptance and Bid Evaluation.
 - (A) bids shall be unconditionally accepted without alteration or correction, except as authorized below. AADC will evaluate bids based on the requirements set out in the ITB, which may include criteria to determine acceptability such as inspection, testing, quality, delivery, and suitability for a particular purpose; the criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life cycle costs; the ITB must set out the evaluation criteria to be used; criteria may not be used in bid evaluation if they are not set out in the ITB;
 - (B) a contract based on total or life cycle costs may be awarded only when the procurement officer determines in writing at the time of contract solicitation that the contract promotes overall economy for the purposes intended, encourages competition, is not unduly

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restrictive, and is in the best interests of AADC;

- 10) Late Bids; Correction or Withdrawal of Bids; Cancellation of Award, as follows:
- (A) bids received after the bid due date and time indicated on the ITB may not be accepted unless the delay was due to an error of AADC;
 - (B) a bidder may correct or withdraw a bid prior to bid opening by AADC;
 - (C) after bid opening by AADC, a bidder may only request correction of mistakes obvious from the terms of the bid, and may not otherwise change, withdraw or cancel its bid except as permitted by AADC in its sole discretion;
- 11) Contract Award After Bids. The procurement officer shall award a contract based on the solicited bids with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the provisions of the ITB.
- (b) Multi Step ITB. When the President and CEO considers it impractical to initially prepare a definitive purchase description to support an award based on price, the procurement officer may issue an ITB requesting the submission of unpriced technical offers to be followed by an ITB limited to the bidders whose bids are determined to be technically qualified under the criteria set out in the first solicitation.
- (c) Request for Proposal (RFP), as follows;
- 1) The RFP is used to procure (i) non construction-related supplies, services and professional services with an estimated cost greater than \$50,000, and (ii) construction, and construction-related supplies, services and professional services, with an estimated cost greater than \$100,000, that cannot be clearly defined or quantified, therefore requiring a negotiated procurement;
 - 2) an RFP with a Statement of Work (SOW) shall be provided by mail to all providers of such services that are known to AADC from submittals to AADC, source lists obtained from associations, professional organizations, yellow pages, or other available sources maintained by AADC;
 - 3) the terms of each RFP shall be determined by AADC, but the minimum areas to be set forth in an RFP and included in responses are:
 - (A) the experience the provider has in the requested service area;
 - (B) a list of clients and scope of similar service provided in the past three years;
 - (C) a specific outline or plan on how the requested service will be provided;
 - (D) the time frame required to complete the service; and
 - (E) the technical and management requirements for the project;
 - 4) before the release of the RFP, selection criteria will be established by which the

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proposal will be evaluated; the criteria will be tailored for each procurement and will be used as a guide for determining the best product or vendor;

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1.040. OTHER METHODS OF PROCUREMENT

- (a) Sole Source Procurements, as follows:
 - (1) a sole source contract may be awarded for supplies, services, or construction without competitive sealed bidding, competitive sealed proposals, or competition procedures; a sole source contract may be awarded only when there is a determination in writing by the President and CEO that there is only one source for the required procurement; a sole source contract may not be awarded if a reasonable alternative source exists;
 - (2) AADC shall negotiate with the single supplier, to the extent practicable, to obtain a contract advantageous to AADC;
 - (3) procurement requirements may not be artificially divided, fragmented, aggregated or structured to justify a purchase under this section or to circumvent the competitive source selection procedures;
- (b) Limited Competition, as follows:
 - (1) a decision to restrict a procurement to a limited number of potential contractors will be accompanied by a written determination by the President and CEO that the full competitive sealed bid or proposal process is impractical or contrary to the public interest;
 - (2) AADC will conduct negotiations, as appropriate, concerning price, delivery schedules, and terms equally with each potential contractor for a limited competition procurement;
 - (3) AADC will, in its discretion, advertise before awarding a limited competition procurement contract for the purpose of determining whether there are other sources for the procurement;
- (c) Emergency Procurement; as follows:
 - (1) a procurement will, in AADC's discretion, be made under emergency conditions if:
 - (A) there exists a threat to public health, safety, or welfare;
 - (B) a situation exists that makes a procurement through competitive bidding impractical or contrary to the public interest; or
 - (C) it is necessary to protect private or public property;
 - (2) reasons for finding that emergency conditions exist include:
 - (A) economic considerations that preclude routine solicitation;
 - (B) delays inherent in the normal procurement process;
 - (C) extreme weather conditions;

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- (D) equipment failure when the need for timely repair is essential;
- (3) the President and CEO shall make a written determination of emergency, stating in detail the factual basis for the emergency, and for the selection of the particular contractor; the determination shall be maintained in the procurement file;
- (d) Small Procurements, as provided in Section 1.045

1.045. SMALL PROCUREMENTS

- (a) AADC may procure supplies, services, professional services or construction that cost no more than \$2,500, by purchase order, after receiving only one quotation or informal proposal from a qualified firm or person.
- (b) AADC may procure supplies, services, professional services, or construction estimated to cost no more than \$5,000 using reasonable and adequate procedures and making records that facilitate auditing of the procurement.
- (c) The following procedures shall be used to procure supplies, services, professional services, or construction estimated to cost more than \$5,000, but no more than \$25,000:
 - (1) At least three firms or persons shall be contacted for a quotation or informal proposal. The solicitation may be made orally or in writing and shall include the specifications, the award criteria, the date and time responses are due, and specify whether the response may be made orally or in writing.
 - (2) The award shall be made in accordance with the specifications and award criteria in the solicitation, and to the responsive and responsible firm or person that submitted the lowest quotation or the informal proposal that is the most advantageous to AADC.
- (d) The following procedures shall be used to procure (i) non construction-related supplies, services, or professional services estimated to cost more than \$25,000, but no more than \$50,000; or (ii) construction, or construction-related supplies, services, or professional services, estimated to cost more than \$25,000, but no more than \$100,000:
 - (1) At least three firms or persons shall be contacted for a written quotation or informal proposal. The solicitation shall be made in writing and shall include the specifications, the award criteria, and the date and time responses are due.
 - (2) The award shall be made in accordance with the specifications and award criteria in the solicitation, and to the responsive and responsible firm or person that submitted the lowest quotation or the informal proposal that is the most advantageous to AADC. AADC shall provide written notice of the award, including the name of the successful offeror, to each firm or person providing a quotation or informal proposal, and shall describe protest rights under Section 1.070 and the time limitations within which a protest must be received by AADC.
- (e) A procurement made under this section shall be solicited from Alaskan vendors, whenever

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practicable.

- (f) AADC may use postings in electronic media to satisfy the competitive solicitation and notice of award requirements in this section. AADC may permit quotes and informal proposals to be submitted in electronic media.

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1.050. CONTRACT FORMATION AND MODIFICATION

- (a) Review and Approval by General Counsel. If a contract contains a term that is in conflict with an AADC standard form contract term or if a standard term is deleted or modified by a term that is not standard, the contract must be reviewed and approved by AADC's legal counsel:
- (b) Bid Cancellation, Rejection. An ITB, RFP, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part, or the date for opening bids or proposals may be delayed when the President and CEO determines in the President and CEO's sole discretion that such action is in the best interests of AADC.
- (c) Determination of Responsibility, as follows:
 - (1) a written determination of responsibility of a bidder or proposer shall be made by AADC; the unreasonable failure of a bidder or proposer to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination of non-responsibility with respect to the bidder or proposer;
 - (2) information furnished by a bidder or proposer under this section is confidential if the bidder or proposer requests it in writing;
- (d) Notice of Intent to Award a Contract. At least five days before the formal award of a contract, AADC will provide to each bidder or proposer a written notice of intent to award a contract which shall include a statement of the bidder's or proposer's right to protest and the name of the successful bidder or proposer.
- (e) Multi-Term Contracts, as follows:
 - (1) a contract for supplies, services, or professional services may be entered into for any period of time considered to be in the best interests of AADC provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting; payment and performance obligations for succeeding fiscal periods shall be subject to the availability of funds;
 - (2) before using a multi-term contract, the procurement officer shall determine in writing that:
 - (A) estimated requirements covering the period of the contract are reasonably firm and continuing; and

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- (B) the contract will serve the best interests of AADC;
 - (C) when funds are not available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled; the contractor shall only be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies, services, or professional services delivered under the contract that are not otherwise recoverable; the cost of cancellation may be paid from any available funds for these purposes;
- (f) Cost Or Pricing Data, as follows;
- (1) before an award of a contract or a change order or contract modification, the contractor or prospective contractor shall submit cost and pricing data; the contractor or prospective contractor shall certify that, to the best of the contractor's or prospective contractor's knowledge and belief, the data submitted is accurate, complete, and current as of a mutually determined specified date and will continue to be accurate and complete during the performance of the contract;
 - (2) before performing additional work or supplying additional materials, when a contractor becomes aware of a situation that may form the basis of a claim for compensation that exceeds the amount designated as the base amount of the contract, the contractor shall submit cost and pricing data on the additional work or materials; the contractor shall certify that, to the best of the contractor's knowledge and belief, the data submitted is accurate, complete, and current and is the actual cost to the contractor performing the additional work or supplying the additional materials;
 - (3) a contract or contract change order must contain a provision that the price to AADC, including the contractor's profit or fee, will be adjusted to exclude any significant sums by which AADC finds that the price is increased because the cost or pricing data furnished by the contractor or prospective contractor is inaccurate, incomplete, or not current as of the date agreed upon by the parties;
 - (4) the requirements of this subsection do not apply when the contract price is set by the law or regulation;
- (g) Right to Inspect Plant. AADC will, in its discretion, at reasonable times, inspect the part of the plant or place of business of a contractor or subcontractor that is related to the performance of a contract awarded or to be awarded by AADC, and all subcontracts under an AADC contract must provide AADC with the right to make such inspections.
- (h) Duty to Maintain Records and Right to Audit Records, as follows:
- (1) Bids and Proposals, as follows:
 - (A) all bidders and proposers who have submitted bids or proposals containing pricing or cost data shall maintain for three years from the notice of award of contract by AADC complete books and records relating to such pricing or cost

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data;

- (B) At any time during the period a bidder or proposer is required to maintain books and records by (1)(A) of this subsection, AADC will, in its discretion audit such books and records; AADC shall give at least five days written notice of such audit, which shall be performed by AADC or an agent of AADC during normal business hours;

(2) Contractors, as follows:

- (A) unless otherwise provided in a contract with AADC, a person awarded a contract by AADC shall maintain for three years after the date of final payment under the contract complete books and records relating to the person's bid or proposal to AADC and the person's performance and charges to AADC under the contract;

- (B) at any time during the period a person awarded a contract by AADC is required to maintain books and records by (2)(A) of this subsection, AADC will, in its discretion audit such books and records. AADC shall give at least five days written notice of such audit, which shall be performed by AADC or an agent of AADC during normal business hours;

(3) Subcontractors, as follows;

- (A) unless otherwise provided in a contract with AADC, all permitted subcontracts under a contract with AADC shall require the subcontractor to maintain for three years after the date of final payment under that subcontract complete books and records relating to the subcontractor's bid or proposal and the subcontractor's performance and charges under the subcontract;

- (B) at any time during the period a subcontractor is required to maintain books and records by section (3)(A) of this subsection. AADC will, in its discretion, audit such books and records. AADC shall give at least five days written notice of such audit, which shall be performed by AADC or an agent of AADC during normal business hours

(i) Standard Modification Clauses for Contracts, as follows:

(1) AADC shall establish standard modification clauses including:

- (A) liquidated damages;
- (B) specified excuses for delay or non-performance;
- (C) termination of the contract for default;
- (D) termination of the contract in whole or in part for the convenience of AADC

(j) Performance and Payment Bond. AADC has the right to request performance and payment bonds and other performance guarantees under contracts with AADC.

(k) Modification of Standard Clauses. AADC will, in its discretion vary, at its discretion, its standard

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contract clauses by approval of the President and CEO based upon a written determination stating the reasons for the variation.

- (l) Fiscal Responsibility. A contract modification, change order, or contract price adjustment under a contract is subject to prior written certification by the President and CEO concerning the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget. If the certification discloses a resulting increase in the total project budget or the total contract budget, the President and CEO may not approve the contract modification, change order, or adjustment in contract price unless sufficient funds are available, or the scope of the project or contract is appropriately adjusted in the sole discretion of the President and CEO; a contract modification change order, or adjustment in contract that is signed by both parties and has been reasonably relied on by a contractor, is presumed to be valid even if the provisions of this section have not been met.

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1.055. ALASKA BIDDER PREFERENCE

Notwithstanding any other provision of these Regulations, the procurement officer shall award a contract based on solicited bids to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent has been applied. In this Section, "Alaska bidder" means a person who

- (a) holds a current Alaska business license;
- (b) submits a bid for goods, services, or construction under the name as appearing on the person's current Alaska business license;
- (c) has maintained a place of business within the state staffed by the bidder or an employee of the bidder for a period of six months immediately preceding the date of the bid;
- (d) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship and the proprietor is a resident of the state, is a limited liability company organized under AS 10.50 and all members are residents of the state, or is a partnership under AS 32.05 or AS 32.11 and all partners are residents of the state; and
- (e) if a joint venture, is composed entirely of ventures that qualify under (a)--(d) of this subsection.

1.060. PROCUREMENT RECORDS AND REPORTS

Retention of Procurement Records.

- (a) Procurement records shall be retained by AADC for three years following the completion of the contract.
- (b) Records of Contracts Awarded Under Competitive Sealed Proposals. A contract file shall be kept by AADC for each contract awarded under competitive sealed proposals. The file shall contain:

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- (1) A copy of the contract;
 - (2) The register of proposals prepared and a copy of each proposal submitted; and
 - (3) the written determination to award the contract;
- (c) Records of Sole Source and Emergency Procurements. AADC shall maintain for five years a record listing all sole source procurement contracts and emergency procurements. The record must contain:
- (1) each contractor's name;
 - (2) the amount and type of each contract; and
 - (3) a listing of the supplies, services, professional services, or construction procured under each contract. and
 - (4) written justification for the sole source procurement.

Authority: AS 14.40.866
AS 14.40.871

1.070. PROTESTS AND CONTROVERSIES

- (a) An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for supplies, services, construction, space leases, or professional services by the corporation. The protest must be in writing and must include at least the following information:
 - (1) the name, address, and telephone number of the protester;
 - (2) the signature of the protester or the protester's designated representative;
 - (3) identification of the solicitation or contract at issue;
 - (4) a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and
 - (5) the form of relief requested.
- (b) A protest based on alleged improprieties in an award of a contract or a proposed award of a contract must be received by AADC within five days after a notice of intent to award is issued by AADC. If the protester shows good cause, the procurement officer will, in that officer's discretion, consider a filed protest that is not submitted in a timely manner.
- (c) The procurement officer will immediately give notice of a protest to the contractor if a contract has been awarded, or if no award has been awarded, to all interested parties.
- (d) Within 10 days after a protest is filed, the President and CEO will issue a written decision containing the basis of the decision concerning the protest. A copy of the decision will be furnished to the protester by certified mail or by other means that provide evidence of delivery.
- (e) A written appeal from a protest decision must be received by the chair of the board, care of AADC, within five days after the decision is received by the protester and must include the following information:
 - (1) a copy the decision being appealed; and
 - (2) identification of the factual or legal errors in the decision that form the basis for

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appeal;

- (f) The AADC Board or Directors will issue a final decision on an appeal within 90 days of receipt of the appeal.

Authority: AS 14.40.866
AS 14.40.871

1.080. TYPES OF CONTRACTS

AADC will use the same type of contracts that are outlined in the Federal Acquisition Regulations 48 C.F.R. 1.16. Some common types are firm fixed price, fixed price variations, cost plus types, and award fee.

Authority: AS 14.40.866
AS 14.40.871

1.090. CONTRACT APPROVAL

- (a) The President and CEO shall approve all contracts:
 - (1) for non construction-related supplies, service or professional services in an amount not exceeding \$50,000;
 - (2) for construction, or for construction related supplies, services or professional services, in an amount not exceeding \$100,000; and
 - (3) for supplies, services, professional services or construction, where the entire amount that is payable under the contact is subject to reimbursement by a launch customer under a contract between AADC and the launch customer that has been approved by the board.
- (b) Board approval is required for all contracts not described in subsection (a).
- (c) For the purposes of this section,
 - (1) AADC will, in its discretion, enter into an agreement on all standard terms with a contractor and negotiate separate notices to proceed with that contractor for each service or product to be provided by such contractor, including without limitation a description of the services or products to be provided and the costs and expenses under such notice to proceed; each notice to proceed shall be considered a separate contract;
 - (2) the President and CEO shall have the right to approve contracts for legal services which provide that AADC will be billed by the hour under terms that the President and CEO determines are appropriate and in the best interests of AADC.

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1.100. STATE CONTRACTS

The state approves and publishes state contracts from under which all state agencies are required to purchase. These cover most of the commonly used items in everyday office operations. Because of its quasi-independent status, AADC is authorized, but not required, to use state contracts. AADC will procure commodities from vendors not under these state contracts if those commodities are available at more favorable prices or service terms.

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1.110. INTERGOVERNMENTAL CONTRACTS

AADC will, at its discretion, utilize other state agencies' and entities' contracts or planned contracts.

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1.115. FEDERAL FUNDING

If a procurement involves the expenditure of federal funds or federal assistance and there is a conflict between a provision of this Article and a federal statute, regulation, policy or requirement, the federal statute, regulation, policy or requirement shall prevail.

1.120. USE OF FEDERAL GENERAL SERVICES ADMINISTRATION CONTRACTS

AADC may, in its discretion, purchase through the General Services Administration or from federal supply schedules of the General Services Administration without competitive sealed bidding, competitive sealed proposals, or other competition, provided that when making or planning such a purchase, AADC

- (1) shall review the scheduled price lists that are reasonably available when purchasing through the General Services Administration or from federal supply schedules;
- (2) shall place the order with the schedule contractor offering the lowest delivered price unless the purchase is made under (3) of this section; and
- (3) may order an item that has a greater price than the lowest delivered price but only if the President and CEO makes a written determination that only the higher priced item will satisfy AADC's needs.