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# CITY OF LOS ANGELES



## RULES AND PROCEDURES

### IMPLEMENTING

## THE DISCLOSURE OF BORDER WALL CONTRACTING ORDINANCE

EFFECTIVE JULY 18, 2018

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These Rules and Procedures are promulgated pursuant to Section 10.50 *et seq.* of the Los Angeles Administrative Code (LAAC), hereinafter referred to as the Disclosure of Border Wall Contracting Ordinance (DBWCO). Each Awarding Authority shall cooperate to the fullest extent with the Designated Administrative Agency (DAA) in the administration of the DBWCO. The DAA may amend these Rules and Procedures from time to time, consistent with applicable law, as required for the implementation of the Ordinance.

## DEFINITIONS

For purposes of these Rules and Procedures, the following definitions shall apply, including the definitions set forth in LAAC Section 10.50, which are incorporated herein.

- a. **Affidavit** is the form the company must sign under penalty of perjury requiring disclosure of any participation in contracts, bids, or proposals to provide goods or services for the design, construction, operation, or maintenance of a federally funded wall, fence or other barrier, including prototypes of a wall, fence or other barrier, along the border between the United States and Mexico on or after March 17, 2017. The Company is required to provide details to the DAA if there are records found.
- b. **Company** means any person, firm, corporation, partnership or combination of these.
- c. **Invitation For Bid (IFB)** incorporates all types of requests which may include an advertisement for bid, including but not limited to: Requests for Bids, Requests for Proposals, Requests for Qualifications, Requests for Design-Builds, Sole Source, and Request for Quotes.
- d. **Person** means any individual, proprietorship, partnership, joint venture, corporation, Limited Liability Company, trust, association or other entity that may enter into Contract.
- e. **Point of Entry (POE)** contracts, bids or proposals as mentioned in the DBWCO relates to contracts that includes work on the physical border wall between the United States and Mexico as called for in Trump's Executive Order No. 13,767.
  - ✓ POE contracts for modernizing existing POEs to decrease wait times by increasing pedestrian and vehicle processing lanes or otherwise meant to improve the flow of traffic between the United States and Mexico are not required to be disclosed under the BWDO.
  - ✓ However, a POE contract, bid or proposal that also includes work for the improvement or replacement of the physical border wall adjacent to the POE is subject to disclosure under the BWDO.

## **PROCEDURE #1: TIMING AND APPLICABILITY**

### **a. Invitation For Bids (IFB), Contracts, and Contract Amendments Before March 17, 2017**

1. IFBs that were released prior to March 17, 2017, and the Contracts awarded pursuant those IFBs, are not subject to the DBWCO, until the resulting Contract is subsequently amended as provided for in Procedure #1b.
2. Contracts and Contract amendments executed before March 17, 2017 are not subject to the DBWCO until the Contracts are subsequently amended, as provided for in Procedure #1b.

### **b. IFBs, Contracts, and Contract Amendments on or After March 17, 2017**

1. Unless otherwise exempt, IFBs released on or after March 17, 2017 are subject to the DBWCO.
2. Unless otherwise exempt or unless they were awarded pursuant to an IFB that was released prior to March 17, 2017, Contracts executed on or after March 17, 2017 are subject to the DBWCO.
3. Unless otherwise exempt, amendments to Contracts previously not subject to the DBWCO become subject to the Ordinance if the Contracts are amended on or after March 17, 2017.

## **PROCEDURE #2: AFFIDAVIT REQUIRED IN PROCUREMENT OF CONTRACTS**

- a. **Awarding Authority Issuance of Contracts:** Unless the Contract is otherwise exempt, Awarding Authorities shall include in their IFBs language informing Companies that the bidder selected for award of the Contract will be required to submit a Disclosure Ordinance Affidavit on the Los Angeles Business Assistance Virtual Network (BAVN) at [www.labavn.org](http://www.labavn.org). This Affidavit must be verified by the DAA before the Contract can be awarded. If no IFB procedure is used to procure a proposed Contract, the Awarding Authority must inform the selected Company that an Affidavit must be submitted on BAVN (and verified by the DAA) before a Contract can be executed.
- b. The DBWCO Affidavit must only be submitted on BAVN one time, unless there are subsequent changes that would affect a Company's response to any of the questions. Companies are responsible for promptly updating the Affidavit if any such changes occur, including changes in contact information, mergers and acquisitions, etc.

### **PROCEDURE #3: REVIEW OF SUBMITTED AFFIDAVITS**

- a. **Departmental Responsibilities:** Prior to executing any Contract, Awarding Authorities must ensure that the Company selected for the award of the Contract has completed and signed the Disclosure Affidavit on BAVN. The Awarding Authority must notify the DAA that the form (and any other applicable EEO compliance forms) is ready to be verified. If the DAA is notified and finds an incomplete or inaccurate submission, it will inform the Awarding Authority, who will be responsible for following up with the Company to correct the problem.
- b. **DAA Responsibilities:** The DAA will verify that the Affidavit is complete, signed, and complies with City requirements. The DAA will update the Company's Affidavit status on BAVN to indicate that the Affidavit was verified.
- c. **Public Record:** Consistent with applicable law, an Affidavit submitted to the City (including any attachments) becomes part of the public record.

### **PROCEDURE #4: EXECUTION OF CONTRACTS AND AMENDMENTS**

- a. **Contracts:** Contracts subject to the DBWCO after the effective date may not be executed until:
  - 1. Language obligating the Company to comply with the Ordinance has been incorporated into the Contract;
  - 2. The Company has submitted an Affidavit on BAVN;
  - 3. The DAA has verified the Affidavit; and
  - 4. The Company has satisfactorily complied with all other applicable City requirements.
- b. **Amendments:** Contracts executed prior to March 17, 2017, and Contracts pursuant to IFBs released before that date are not subject to the DBWCO. However, if these Contracts are amended on or after March 17, 2017, the amendments may not be executed until the Company has complied with DBWCO requirements.

### **PROCEDURE #5: VIOLATIONS OF THE ORDINANCE OR THESE PROCEDURES**

- a. A Company's alleged violation of the Ordinance or these Rules and Procedures may be reported to the DAA, which shall investigate the matter and make a determination as to whether a violation has taken place.

- b. Upon a finding that a Company has violated the Ordinance or these Rules and Procedures, such violation may be considered a material breach of the Contract. Such breach entitles the City to terminate the Contract.
- c. A Company's violation of the Ordinance or these Rules and Procedures may be considered evidence against the Company in an action taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

#### **PROCEDURE #6: EXEMPTIONS**

**Statutory Exemptions Not Requiring DAA Approval:** The exemptions in the Los Angeles Administrative Code Section 10.50.3 do not require DAA approval before contract execution.

#### **PROCEDURE #7: EFFECTIVE DATE OF RULES AND PROCEDURES**

These Rules and Procedures take effect July 18, 2018.