



PROCUREMENT (AND SUBAWARDS) IN THE COMMUNITY GRANTS PROGRAM

R4 EPA Community Grants Training Series

December 4, 2025

Kelsey Binder, Attorney Advisor, EPA Office of General Counsel

IMPORTANT CAVEATS



- This training is designed to provide information on EPA's policies and practices for encouraging Community Grants recipients to comply with statutory and regulatory procurement standards.
- The statutes/regulations take precedence in the event of a conflict with any of the materials contained on these slides.
- For **project-specific questions**, please contact your Regional EPA Community Grants contact.

Note: The information in this presentation is current as of January 6, 2026, and may be subject to change (including due to Executive Orders).

AGENDA

- ☐ Procurement Updates
- ☐ Procurement Flexibility
- ☐ Subawards v. Contracts
- ☐ Procurement Standards
- ☐ Considerations for Preparing Bidding Documents/Selecting Vendors
- ☐ Contract Provisions

PROCUREMENT UPDATES



UNIFORM GRANTS GUIDANCE (UGG/2 CFR PART 200) UPDATES

Procurement

- Gives Tribal Nations the same status as States under [2 CFR 200.317](#) such that Tribal Nations may follow their own procurement policies and procedures, *if* any exist. [*Tribes will be subject to the procurement standards in effect at the time of award.]
- Removes the prior prohibition on geographic preference contained at [2 CFR 200.319\(c\)](#).
- Removes the prior requirement in [2 CFR 200.324\(b\)](#) to negotiate profit as a separate element of the price for each contract where there is no price competition (e.g., when only one bid is received) and in all cases where cost analysis is performed.

Threshold Increases

- Increased equipment and unused supplies from \$5,000 to \$10,000.
- Increased micro-purchase threshold to \$15,000, and simplified acquisition threshold (SAT) to \$350,000*

More information about the 2 CFR Part 200 updates is available [here](#).

EFFECTIVE DATES OF UPDATES

The 2 CFR Part 200 updates apply to:

- ✓ Grants/cooperative agreements awarded on or after October 1, 2024.
- ✓ Existing cooperative agreements that have funding added to them on or after October 1, 2024.
- ✓ Consistent with *Recipient and Applicant Information Notice (RAIN)-2025-G01*, recipients with fully-funded cooperative agreements made prior to October 1, 2024, that have requested and obtained EPA's approval of a no cost amendment to allow them to apply the "2024 2 CFR Revisions" to the grant/cooperative agreement. RAIN-2025-G01 is available [here](#).

***Notwithstanding, the micro-purchase threshold and SAT increases only apply to grants awarded on or after October 1, 2025, unless you are informed otherwise.**

STATUTORY PROCUREMENT FLEXIBILITY

The FY 2024 Consolidated Appropriations Act (P.L. 118-42), which was signed into law on March 9, 2024, includes the following procurement flexibility provision:

[T]he funds made available under this heading for Community Project Funding/Congressionally Directed Spending grants in this or prior appropriations Acts are not subject to compliance with Federal procurement requirements for competition and methods of procurement applicable to Federal financial assistance, if a Community Project Funding/Congressionally Directed Spending recipient has procured services or products through contracts entered into prior to the date of enactment of this legislation that complied with state and/or local laws governing competition.

This provision was carried forward in the FY 2025 Full-Year Continuing Appropriations and Extensions Act (P.L. 119-4).

Soo....what does all of this mean?

STATUTORY PROCUREMENT FLEXIBILITY (CONT'D)

State/Local Compliance

Recipients are not subject to Federal procurement requirements for competition and method of procurement if the recipient has:

- ✓ Procured services or products through contracts entered into **prior to March 15, 2025; and**
- ✓ Complied with state and/or local laws governing competition (including laws/policies relating to participation by disadvantaged business enterprises or equivalent, as applicable, and method of procurement).

Covered Projects

Recipients request coverage by providing written statement to EPA PO affirming:

- Any contracts entered into prior to March 15, 2025 (include date of executed contract(s)); and
- Compliance with state and/or local laws governing competition.
 - Including: laws/policies relating to participation by disadvantaged business enterprises or equivalent, as applicable, and method of procurement.

And, submitting pertinent docs for review.

Contracts (and amendments) will be considered covered by the provision upon receipt of written confirmation from EPA.

Federal Compliance: Non-Covered Projects

Recipients who do not qualify for the procurement flexibility must procure all services, supplies, and equipment using CG funding in accordance with all applicable federal requirements.

- Including: 40 U.S.C. 1101 et seq. (the Brooks Act) or an equivalent State qualifications-based procurement requirement, as applicable; 2 CFR Part 200; 2 CFR Part 1500; and/or 40 CFR Part 33.

All recipients, including those that qualify for the procurement flexibility discussed above must comply with the requirements in the Davis-Bacon Act, American Iron and Steel (AIS), and Build America, Buy America (BABA) in any procurements and resulting contracts as applicable; these requirements are not waived by this provision and include incorporation of prevailing wage determinations and AIS/BABA in solicitation documents.

SUBAWARDS V. CONTRACTS



SUBAWARD V. PROCUREMENT CONTRACT: WHAT'S THE DIFFERENCE?

Subawards

- A financial assistance transaction between an EPA grant recipient and an eligible subrecipient (or by a subrecipient to a lower subrecipient).
- Do not include payments to a contractor or a program beneficiary or participant in a Federal program.
- Regulations and EPA Policy do not require competition for subawards.
- **PROFIT IS NOT ALLOWABLE!**



Contracts

- As provided in [2 CFR 200.331](#), contractors (including individual consultants) typically:
 - Provide goods and services on commercial terms;
 - Provide similar goods and services to many different purchasers;
 - Operate in a competitive environment; and
 - A reasonable profit is allowable.

Transactions with for-profit companies and individual consultants are (with very, very few exceptions) procurement contracts.

Just a friendly reminder...

EPA Subaward Policy Appendix A: Distinctions Between Subrecipients and Contractors

EPA SUBAWARD POLICY AND ATTACHMENTS

- ✓ The [EPA Subaward Policy](#) has several appendices, including:
 - Appendix A: Distinctions Between Subrecipients and Contractors
 - Appendix B: National Term and Condition for Subawards
 - Appendix C: Model Programmatic Subaward Reporting Requirement
 - Appendix D: Subaward Agreement Template
- ✓ Additionally, EPA posted an [EPA Subaward Policy Frequently Asked Questions](#).
- ✓ There are additional resources about subawards on the [Office of Grants and Debarment Webinars](#) page.

PROCUREMENT STANDARDS



FAILURE TO FOLLOW THE RULES COULD MEAN...

If a recipient fails to follow applicable statutes/regulations, EPA can impose specific conditions (i.e., more requirements) [[2 CFR 200.208](#)]:

- (1) Requiring payments as reimbursements rather than advance payments;
- (2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given performance period;
- (3) Requiring additional, more detailed financial reports;
- (4) Requiring additional project monitoring;
- (5) Requiring the recipient or subrecipient to obtain technical or management assistance; or
- (6) Establishing additional prior approvals, including approval of a corrective action plan.



FAILURE TO FOLLOW THE RULES COULD MEAN (CONT'D)...

If a recipient fails to follow the additional requirements or EPA does not think the additional requirements will solve the issue, EPA *may* take action for noncompliance.

Additional remedies for noncompliance are discussed in 2 CFR 200.339 – 200.343. For example:

▼ Remedies for Noncompliance

§ 200.339 Remedies for noncompliance.

§ 200.340 Termination.

§ 200.341 Notification of termination requirement.

§ 200.342 Opportunities to object, hearings, and appeals.

§ 200.343 Effects of suspension and termination.

- Temporarily withhold payments until the recipient or subrecipient takes corrective action.
- Disallow costs for all or part of the activity associated with noncompliance of the recipient or subrecipient.
- Suspend or terminate the federal award in part or its entirety.
- Initiate suspension or debarment proceedings as authorized in 2 CFR Part 180 and the Federal agency's regulations, or for pass-through entities, recommend suspension or debarment proceedings be initiated by the Federal agency.
- Withhold further Federal awards (new awards or continuation funding) for the project or program.
- Pursue other legally available remedies.

THE BROOKS ACT

Community Grants projects that are inclusive of Clean Water State Revolving Fund (CWSRF) eligible activities **ONLY**, irrespective of whether such projects are co-funded with CWSRF funding, must comply with the procurement processes for architectural and engineering (A/E) services as identified in 40 U.S.C. 1101 et seq. (the Brooks Act), or an equivalent State qualifications-based requirement (33 U.S.C. 1382(b)(14)).



THE BROOKS ACT (CONT'D)

NOTE: FOR projects with workplans inclusive of CWSRF eligible activities only!!

33 U.S.C. 1382(b)(14): A contract to be carried out using funds directly made available by a capitalization grant under this subchapter for **program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services** **shall** be negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40 or an equivalent State qualifications-based requirement (as determined by the Governor of the State).

Why does this apply?

Because the language contained in the explanatory statements accompanying the FY 2022, FY 2023, and FY 2024 Consolidated Appropriations Acts that states: “Applicable Federal Requirements that would apply to a Clean Water State Revolving Fund or Drinking Water State Revolving Fund project grant recipient shall apply to a grantee receiving a CPF grant under this section.”

THE BROOKS ACT (CONT'D)

What does this requirement mean?

- ✓ For A/E professional services as described in the previous slide (not for other things an architect and/or engineer may do), the recipient must publicly announce the competition for A/E services and conduct **qualifications-based procurement where price is not a selection factor.**
- ✓ The recipient should have discussions with at least 3 firms to consider anticipated concepts and compare alternative methods for furnishing services and select at least 3 firms considered to be the most highly qualified to provide the services required.
- ✓ Where equivalent State requirements are complied with, the source of the requirement (e.g., existing State legislation or regulation, etc.) must be stated, and a certification from the Governor of the State that the State's A/E procurement requirements are equivalent to 40 U.S.C. 1101 et seq. must accompany the grant application. In lieu of a certification from the Governor, the Attorney General's certification submitted with each grant application may include this certification.
- ✓ The recipient shall negotiate a contract with the most highly qualified firm to determine compensation that is fair and reasonable based on a clear understanding of the project scope, complexity, professional nature, and the estimated value of the services to be rendered.
 - In the event that a contract cannot be negotiated with the most highly qualified firm, negotiation continues in order of qualification.

Reminder: Unless the statutory procurement flexibility applies, EPA CANNOT WAIVE THIS REQUIREMENT.

COMPETITION BASICS UNDER THE UGG

Except for purchases at or below the micro-purchase level, recipients **other than state or Tribal entities** (for grants awarded on or after 10/1/2024, or that have updated T&Cs that incorporate 2 CFR Part 200 updates), that procure services, supplies, and/or equipment under EPA assistance agreements must comply with the competitive procurement standards in 2 CFR Part 200 (including requirements for full and open competition).

States and Tribal Nations follow the same procurement procedures as they do for non-Federal funds, if any exist, apart from the requirements in:

- ✓ 200.321 (small, minority, and women's businesses)
- ✓ 200.322 (domestic preferences)
- ✓ 200.323 (recycled materials)
- ✓ 200.327 (contract clauses contained in Appendix II to 2 CFR Part 200)

Note, while EPA's 40 CFR Part 33 Disadvantaged Business Participation rule also applies to States and Tribes, there are separate rules for Tribal Nations as it pertains to the six good faith efforts to solicit DBEs requirement.

Refer to [EPA's Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#) as guidance.

Some provisions of UGG requirements, 2 CFR Part 1500, and 40 CFR Part 33 are eligible for Procurement Flexibility.

EPA'S DBE RULE – SIX GOOD FAITH EFFORTS

Local governments, States, Non-profits

§ 33.301 What does this subpart require?

A recipient, including one exempted from applying the fair share objective requirements by [§ 33.411](#), is required to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, even if it has achieved its fair share objectives under [subpart D of this part](#):

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in [paragraphs \(a\) through \(e\)](#) of this section.

Tribal Nations

§ 33.304 Must a Native American (either as an individual, organization, Tribe or Tribal Government) recipient or prime contractor follow the six good faith efforts?

- (a) A Native American (either as an individual, organization, corporation, Tribe or Tribal Government) recipient or prime contractor must follow the six good faith efforts only if doing so would not conflict with existing Tribal or Federal law, including but not limited to the Indian Self-Determination and Education Assistance Act ([25 U.S.C. 450e](#)), which establishes, among other things, that any federal contract, subcontract, grant, or subgrant awarded to Indian organizations or for the benefit of Indians, shall require preference in the award of subcontracts and subgrants to Indian organizations and to Indian-owned economic enterprises.
- (b) Tribal organizations awarded an EPA financial assistance agreement have the ability to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. Tribal governments with promulgated tribal laws and regulations concerning the solicitation and recruitment of Native-owned and other minority business enterprises, including women-owned business enterprises, have the discretion to utilize these tribal laws and regulations in lieu of the six good faith efforts. If the effort to recruit Indian organizations and Indian-owned economic enterprises is not successful, then the recipient must follow the six good faith efforts. All tribal recipients still must retain records documenting compliance in accordance with [§ 33.501](#) and must report to EPA on their accomplishments in accordance with [§ 33.502](#).
- (c) Any recipient, whether or not Native American, of an EPA financial assistance agreement for the benefit of Native Americans, is required to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. If the efforts to solicit and recruit Indian organizations and Indian-owned economic enterprises is not successful, then the recipient must follow the six good faith efforts.
- (d) Native Americans are defined in [§ 33.103](#) to include American Indians, Eskimos, Aleuts and Native Hawaiians.

A FEW GENERAL PROCUREMENT STANDARDS

[2 CFR 200.318](#) details general procurement standards that apply to recipients/subrecipients, including:

a) Documented procurement procedures. The recipient or subrecipient must maintain and use documented procedures for procurement transactions under a Federal award or subaward, including for acquisition of property or services. These documented procurement procedures must be consistent with State, local, and tribal laws and regulations and the standards identified in [§§ 200.317](#) through [200.327](#).

b) Oversight of contractors. Recipients and subrecipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. See also [§ 200.501\(h\)](#).

.....

e) Procurement arrangements using strategic sourcing. When appropriate for the procurement or use of common or shared goods and services, recipients and subrecipients are encouraged to enter into State and local intergovernmental agreements or inter-entity agreements for procurement transactions. These or similar procurement arrangements using strategic sourcing may foster greater economy and efficiency. Documented procurement actions of this type (using strategic sourcing, shared services, and other similar procurement arrangements) will meet the competition requirements of this part.

.....

i) Procurement records. The recipient or subrecipient must maintain records sufficient to detail the history of each procurement transaction. These records must include the rationale for the procurement method, contract type selection, contractor selection or rejection, and the basis for the contract price.

COMPETITION THRESHOLDS UNDER THE UGG

1. Purchases up to the micro purchase level (generally **\$15,000**) may be made without competition provided the recipient distributes purchases equitably among qualified suppliers to the extent “practicable” and the prices are reasonable. [2 CFR 200.320\(a\)\(1\)](#).
 - Generally, for purchases of supplies (including computing devices) but recipients may obtain consulting or instructional services PROVIDED the equitable distribution requirement is met.
 - A series of micro purchases with the same consultant without using other sources as well will raise compliance issues.



Some universities or nonprofit research institutions may have higher micro-purchase thresholds if approved by the cognizant Federal agency for indirect costs.

COMPETITION THRESHOLDS UNDER THE UGG (CONT'D)

2. Recipients/subrecipients may use small purchase procedures for contracts up to the simplified acquisition threshold (**\$350,000**) by obtaining price or rate quotations from an adequate number of qualified sources. [2 CFR 200.320\(a\)\(2\)](#).
- EPA expects recipients to obtain prices/quotes from at least 3 sources.
 - Can be by email
 - Recipients must document their efforts:
 - For professional services, the email soliciting prices/quotes may be used for documentation.
 - For equipment, internet searches of price catalogues documented by “screen shots” are acceptable.

COMPETITION THRESHOLDS UNDER THE UGG (CONT'D)

3. For procurements **in excess of \$350,000**, recipients/subrecipients must either advertise for sealed bids or publicly solicit competitive proposals. [2 CFR 200.320\(b\)\(2\)](#).
- Sealed bidding is appropriate when detailed specifications are available and selection is based principally on price.
 - A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder.
 - Competitive proposal procedures are typically used for professional services.
 - Generally, cost/price **MUST** be a selection factor in evaluating proposals.

Qualifications-based procurement, where price is not a selection factor, must be used if the grant statute specifically requires qualifications-based procurement (e.g., 33 U.S.C. 1382(b)(14), which applies to *some* Community Grants). Additionally, it *may* be used when acquiring services that can **ONLY** be provided by a licensed A/E firm (such as when **REQUIRED** by federal, state, or local law). It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

DOES THE TYPE OF CONTRACT MATTER?

Time and Materials Contracts. [[2 CFR 200.318\(j\)](#)]

Contract price is the sum of the cost of materials plus fixed labor hours that are “loaded” with wages, overhead, and profit such that the contractor has no incentive to control costs.

- May be used only when no other contracting instrument is available, and
- There is a cap on the amount of the contract that the contractor exceeds at its own risk.



Contract Cost and Price. [[2 CFR 200.324\(c\)](#)]

The “cost plus a percentage of cost” and “percentage of construction cost” methods of contracting **must not be used**.

- This method does not encourage efficiency. → The more work the contractor does, the more profit is earned.

DOES THE TYPE OF CONTRACT MATTER? (CONT'D)

Can I use the Construction Manager at Risk (CMaR) delivery method?

Maybe.

- The federal procurement standards at 2 CFR 200.317 through 200.327 do not specifically address the use of CMAR.
- While state laws may authorize the use of CMAR, this does not waive the federal procurement standards.
- When using the CMAR delivery method, grant recipients (other than states and Tribes for grants awarded on or after 10/1/2024 or with updated grant terms and conditions), must still follow applicable federal procurement standards. [*Other considerations for **all** recipients include but are not limited to DBE, AIS, BABA, and Davis-Bacon.]
- Certain CMAR procedures may be inconsistent with the federal rules and, in turn, place the EPA award funding at risk.
- Recipients should consider the complexities posed by CMAR **before** selecting it as a project delivery method.

CONSULTANT FEE CAP

- Limits the amount of compensation for individual consultants that recipients may charge to EPA agreements to Level IV of the Federal Executive Level. [*Does not include consultant's overhead or travel costs.]
- **STATUTORY!!!!** Implementing regulations at [2 CFR 1500.10](https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-1500/section-1500.10).
 - EPA cannot waive requirement.
- When the Cap applies is based on whether the recipient selects, directs, or controls the consultant along the same lines as an employee.
- Contracts with multi-employee consulting firms rarely trigger consultant fee cap but terms of contract are important.
- Consultants are contractors even if they receive an IRS 1099 from recipient—competitive procurement rules apply!



SOLE SOURCE CONTRACTS

As provided at [2 CFR 200.320\(c\)](#), procurement through solicitation of a proposal from only one source may be used only when one or more of the following circumstances apply:

- Item/service only available from a single source.
- Public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
- Awarding agency or pass-through entity expressly authorizes non-competitive proposals.
- After solicitation of a number of sources, competition is determined inadequate.
- Aggregate amount of purchase does not exceed the micro-purchase threshold

“Single source” procurements are justified by copyrights, patents, and equipment maintenance agreements with manufacturers.

The fact that a contractor prepared a proposal **does not** justify a sole source contract for that entity to perform work.

EPA will **not** approve sole source contracts for goods and services that are readily available in the commercial marketplace, including contractor or instruction services provided by individuals.



“XYZ contractor is familiar with our program and we have partnered with the firm for years” **Does not work!**

SOLE SOURCE CONTRACTS & TRIBAL NATIONS



Under the Indian Self-Determination and Education and Assistance Act (ISDEAA), tribal recipients may give preference to Indian organizations and to Indian-owned economic enterprises when awarding procurement contracts under EPA assistance agreements, which is consistent with 40 CFR 33.304.

EPA does not interpret the ISDEAA or 40 CFR Part 33 to authorize sole source procurements with Indian organizations and Indian owned economic enterprises. However, tribal recipients may give preference to these entities when developing lists for soliciting bids and proposals.

CONFLICTS OF INTEREST

Conflicts of interest are prohibited by [2 CFR 200.318\(c\)](#).

Personal conflicts of interest: “No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.”

Organizational Conflicts of Interest

“If the [recipient] has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.”



CONSIDERATIONS FOR PREPARING SOLICITATION DOCUMENTS/SELECTING VENDORS

PRACTICES THAT ARE RESTRICTIVE OF COMPETITION

As provided in [2 CFR 200.319\(b\)](#), “In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids **must be excluded** from competing for such procurements.”

Practices that are **restrictive of competition** include:

- ⊗ Using sample language or templates from contractors planning to bid on the services
- ⊗ Accepting **any assistance** from a contractor ***if*** that contractor plans to compete for the resultant contract
- ⊗ Imposing unreasonable competition requirements, such as:
 - ⊗ Overly narrow specifications that only one firm can meet
 - ⊗ Requiring firms to have experience with EPA Grants
- ⊗ Making noncompetitive awards to consultants that are on retainer contracts
- ⊗ Discouraging other contractors from submitting an offer by naming firms



EPA's DBE RULE

Make good faith efforts to solicit quotes from Disadvantaged Business Enterprises required by [40 CFR Part 33](#).

- EPA does not currently have a directory or list of certified MBEs/WBEs, however, EPA recommends checking with the Small Business Administration, Department of Transportation, or the state in which your organization intends to do business.

EPA recommends publicly advertising RFPs/RFQs and keeping the bidding period open for **at least 30 days for full and open competition.**

*Note, consistent with 40 CFR 33.304, Tribal Nations are allowed to “solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts.”



COMPETE SMART!

Consider the use of multi-year contracts with broad scopes and options when investing in a competitive proposal process.

✓ Cost/price analysis must be done in advance

- Include “**options**” in the Request For Proposal/Request For Qualifications that will allow the same contractor to conduct work under current and future grants.
- Must request updated cost information from the contractor to determine if there is a change in rates and to ensure the new price for services is reasonable as required by [2 CFR 200.324\(a\)](#) & [404](#).
- Verify any price increase is reasonable by using information available online (or other sources) to conduct a market survey.

For example...

“The resulting contract will be for 4 years. [Organization name] may amend or extend this contract beyond the initial 4 years to accommodate the terms and conditions of the FYXX Grant or future EPA grants awarded to [Organization name] within this 4-year period provided a market survey conducted by [Organization name] indicates that the prices the contractor proposes are reasonable.”

MUST I CONSIDER COST REASONABLENESS IN EVALUATING PROPOSALS?

- Generally, yes, unless the task falls under the scope of the Brooks Act qualifications-based procurement procedures or equivalent State qualifications-based procurement requirement (i.e., Community Grants projects with workplans inclusive of CWSRF-eligible activities that are procuring for A/E services as identified at 33 U.S.C. 1382(b)(14)) or the task **CAN ONLY** be performed by a licensed A/E firm (such as when **REQUIRED** by federal, state, or local law)
 - For instance, price reasonableness must be considered when procuring *construction* services.
- Then, and only then, can the recipient conduct a qualifications-based procurement, where price is not considered, but just for **that particular task(s)**.
- Otherwise, price reasonableness **must** be considered, which will be discussed in more detail on the following slides.

COST REASONABLENESS MUST BE CONSIDERED

 **Cost-Effectiveness:** Ensure recipients obtain goods and services at reasonable prices, thus maximizing the value of the grant funds.

Community Grants recipients may compare pricing for grant writing/application preparation and grant implementation services.

*Recipients may directly charge reasonable proposal preparation costs to the EPA grant.

Options for evaluating price reasonableness:

- ❖ Alongside all other evaluation criteria
- ❖ Only for the top two or three scoring proposals



REMINDER: FOR COMMUNITY GRANTS PROJECTS WHERE THE *BROOKS ACT* APPLIES (i.e., those inclusive of CWSRF-eligible activities), PRICE MUST NOT BE CONSIDERED IN EVALUATING PROPOSALS.

WEIGHTED EVALUATION CRITERIA

- **Must have weighted evaluation factors** [[2 CFR 200.320\(b\)\(2\)\(i\)](#)]
 - Document rationale for selecting the contractor (required by [2 CFR 200.318\(i\)](#))
 - EPA recommends that the **reasonableness of cost/price proposal is at least 25% of the total percentage** (when applicable)
 - **Reasonableness of cost/price can** be evaluated at the same time as the other factors for all bids (which is EPA's preference) **OR** only evaluated for two or more top-scoring bids (when multiple bids are received) (when applicable)
- Evaluation criteria may:
 - Use weighted percentages;
 - Assign points to each selection factor; or
 - Include a range of points with associated descriptors

WEIGHTED EVALUATION CRITERIA (CONT'D)

For example, responses will be evaluated against the following factors

- X% - Demonstrated experience in [*infrastructure project activities*]
- X% - successfully completing tasks/projects
- X% - engaging with community member, federal & state agencies
- X% - Experience and capacity of project team/personnel
- 25% - Reasonableness of cost/price proposal (e.g., rates, other available info) – as applicable
- X% - References



90 - 100	Most Effective	5
80 - 89	Above Average	4
70 - 79	Average	3

Or, for example

- Highly Advantageous (4 Points)
- Advantageous (3 Points)
- Not Advantageous (2 Points)
- Unacceptable (0 Points)

OTHER CONSIDERATIONS FOR PREPARING SOLICITATION DOCS

■ Davis-Bacon:

- Davis-Bacon labor standards and prevailing wage requirements only apply to a federal financial assistance program if the statute (i.e., typically the statute authorizing the grant program) mandates compliance with Davis-Bacon prevailing wage requirements [**Davis-Bacon does apply to Community Grants – but not all projects/contracts**]
- If Davis-Bacon applies to your grant **and** you are procuring for services that trigger Davis Bacon compliance, the prevailing wage determination **must** be included in the solicitation documents.

■ Build America, Buy America (BABA):

- Established a domestic content procurement preference for all Federal financial assistance obligated for ***infrastructure*** projects after May 14, 2022.
- The domestic content procurement preference requires that all iron, steel, manufactured products, and construction materials used in covered infrastructure projects are produced in the United States.

■ American Iron and Steel (AIS)

***If you are unsure if any of the above requirements apply to your project/procurement or contract, please consult your EPA regional point of contact and/or the terms and conditions of your EPA grant.**

CONSIDERATIONS FOR SELECTING A VENDOR

- ☐ **Document the decision.**
 - E.g., a scoring rubric
- ☐ **The lowest price does not have to be selected, but you must document the rationale and basis for the contract price. [[2 CFR 200.318\(h\) and \(i\)](#)]**
 - The recipient may be required to provide this documentation to the EPA's Grants Management Officer (GMO)/Award Official for review as required by 2 CFR 200.337(a).
 - Prior approval of the contract terms by the GMO may be required as provided for in 2 CFR 200.208(c)(6) if the GMO/Award Official is concerned about the recipient's compliance with competitive procurement rules.
- ☐ **For grants awarded prior to October 1, 2024, or that do not have Terms and Conditions that incorporate the 2 CFR Part 200 updates, if only one bid is received, and the contract is over \$250K, you must negotiate profit as a separate element of the contract.**
 - Also applies to "Qualifications-based" procurement for A/E services where price is not a selection factor as required by [2 CFR 200.320\(b\)\(2\)\(iv\)](#).
- ☐ **Ensure the contractor is not suspended or debarred. [[General T&C #21. Suspension and Debarment](#)]**

AFTER THE PROCUREMENT: CONTRACT PROVISIONS



After the recipient has selected a contractor, **the recipient** must determine what contract clauses need to be included in their contract*, such as:



- Contract provisions in [Appendix II to 2 CFR Part 200](#) (as applicable)
- [AIS](#) (as applicable)
- [BABA](#) (as applicable)
- [Davis-Bacon](#) (as applicable)
- [Appendix A to 40 CFR Part 33](#) (as applicable)
- [Recipient and Subrecipient cross-cutter requirements](#) (in addition to recipients' subaward agreements, some of these provisions may be pertinent to recipients' contracts)

*While EPA has a role in ensuring federal requirements are met and is here to assist, recipients are ultimately responsible for compliance and ensuring that all language included in their contracts meets federal requirements.

RESOURCES

EPA Resources (non-exhaustive)

- Your Regional POC!!
- TA Provider – EFC!!
- [EPA Community Grants website](#) (contains trainings and other resources)
- [EPA BABA webpage](#)
- [EPA AIS webpage](#)

Statutes/Regulations (non-exhaustive)

- [40 USC 1101 etc.](#) (the Brooks Act)
 - [33 USC 1382\(b\)\(14\)](#) (discusses activities where Brooks Act procurement procedures or an equivalent State qualifications-based requirement applies)
- [2 CFR Part 200](#) (the UGG)
- [2 CFR Part 184](#) (BABA regulations)
- [2 CFR Part 1500](#) (EPA's supplement to the UGG)
- [29 CFR Subtitle A](#) (Davis-Bacon regs, including required labor standards/contract provisions)
- [40 CFR Part 33](#) (EPA's DBE regs)

Reminder: **Do not seek assistance** from contractors (including individual consultants) in preparing your solicitation documents (RFP/RFQ) *if* that contractor plans to submit a bid!