

Brownfields Grants: Guidance on Competitively Procuring a Contractor

Below are factors for non-state and non-Tribal entities to consider and incorporate, as applicable, in issuing a Request for Proposals (RFP)/Request for Qualifications (RFQ) (or other solicitation document(s)) for the services to be performed in connection with current and/or future EPA Brownfields Grants. This guidance applies when the amount of the contract will be more than the micro-purchase threshold (\$10,000 for most entities).¹

This guidance incorporates the updates to 2 CFR Part 200 and applies to grants/cooperative agreements awarded on or after October 1, 2024, and existing assistance agreements that have Terms and Conditions that incorporate the 2 CFR 200 “2024 Revisions.”

Consistent with 2 CFR 200.319, do not seek or accept any assistance from a contractor in preparing an RFP/RFQ if that same contractor plans to submit an offer in response to that RFP/RFQ.

- You must not accept a proposal, bid, or other type of offer from a contractor that provides any assistance or guidance in developing, drafting, or preparing the RFP/RFQ.
- Assistance also includes situations in which the contractor provides sample RFP/RFQ materials or suggests that you review a particular community’s RFP/RFQ as an example. This is an improper procurement practice.
- You may find example solicitation documents yourself by searching online, asking an existing recipient for a copy of their documents, or contacting EPA’s Project Officer or a [Technical Assistance for Brownfields \(TAB\) Communities](#) provider for assistance.

Consistent with 2 CFR 200.319, do not include language that restricts/limits competition or gives a particular contractor an advantage.

- For example, stating that you only seek firms with experience with EPA Brownfields Grants limits full and open competition. Such a restriction is inconsistent with 2 CFR 200.319(c) in that it does not allow firms that have experience in addressing contaminated properties (but not necessarily EPA Brownfields Grants) or new firms entering the market to compete.
- Also, do not identify any contractor in the RFP/RFQ as that could discourage other contractors from submitting an offer.

EPA recommends including options-based procurement.

- If your organization is awarded another Brownfields Grant in a certain period of time (EPA’s guidance is within 5 years), including “options” in the RFP/RFQ may allow you to use the same contractor to conduct work under your current grant and/or future grants. If you exercise this option, you 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) and 2 CFR 200.404. You should verify that any price increase is reasonable by using information available online (or other sources) to conduct a market survey. Profit must be negotiated as a separate element for each contract in which there is no price competition (this does not apply to grants awarded on or after October 1, 2024, or updated with new Terms and Conditions).

¹As stated in 2 CFR 200.320(a)(1) and (c)(1), informal procurement methods or noncompetitive procurement may be used when the value of the contract does not exceed the micro-purchase threshold.

- For example, the RFP/RFQ may state: “The resulting contract will be for four years. [Organization Name] may amend or extend this contract beyond the initial four years to accommodate the terms and conditions of the FYXX Brownfields Assessment Grant or future EPA grants awarded to [Organization Name] within this four-year period provided a market survey conducted by [Organization Name] indicates that the prices the contractor proposes are reasonable.”

As applicable, include the Davis-Bacon prevailing wage determination and/or the Build America, Buy America (BABA) domestic content procurement preference in solicitation documents.

- Davis-Bacon labor standards and prevailing wage requirements apply to certain activities funded by Brownfields Grants (CERCLA 104(g)) – e.g., construction of caps, barriers, and structures which permanently house treatment equipment (hazardous substances + petroleum); excavation of contaminated soil (hazardous substances); abatement of contamination in buildings (hazardous substances). If you are procuring services that trigger Davis-Bacon compliance, the prevailing wage determination must be included in the solicitation documents.
- BABA established a domestic content procurement requirement 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.

Consistent with 2 CFR 200.320(b)(2)(iii), price must be a selection factor in the evaluation of proposals or quotes.

- The reasonableness of costs/price proposals must be evaluated for the scope of services outlined in the RFP/RFQ and must be a substantially weighted criterion. This is to help ensure that recipients are receiving the most advantageous offer, with price and other factors considered, for the work proposed by each bidder. EPA recommends that the cost/price reasonableness criterion is weighted at least 25%.
- As provided in 2 CFR 200.320(b)(2)(iv), “qualifications-based procurement,” where price is not an evaluation factor, may be used when acquiring services that can only be provided by a licensed Architectural and Engineering (A/E) firm; such as when state or local law requires that an A/E firm develop specifications for construction work that is part of a remediation project. When the remediation activities do not require the services of an A/E firm, price must be evaluated for those activities.
- Qualification-based procurement **does not apply to Brownfield Assessment Grants or assessment-related activities that occur under a Brownfields Multipurpose Grant**. Although A/E firms are one potential source for a Qualified Environmental Professional (QEP) for site assessments as indicated in the definition of Environmental Professional in the All Appropriate Inquiry Rule, 40 CFR 312.10, other types of firms and individuals may also provide QEP services.
- Note: The Brooks Act provisions contained at 40 USC 1101 et seq. relating to the selection of architects and engineers do not apply to Brownfields Grants.

The RFP/RFQ must include weighted factors against which responses will be evaluated or a similar evaluation framework that establishes a documented rationale for selecting the contractor as required by 2 CFR 200.318(i).

EPA recommends that the reasonableness of cost/price proposal is at least 25% of the total percentage. This factor may 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).

For example, responses will be evaluated against the following factors:

- X% - Demonstrated experience in addressing contaminated properties
- X% - Demonstrated experience in successfully completing tasks/projects
- X% - Demonstrated experience in effectively engaging with community members and federal and state agencies
- X% - Experience and capacity of project team/personnel
- 25% - Reasonableness of cost/price proposal (e.g., rates) based on a comparison of prices among competing offerors and other available information on market rates for consulting services
- X% - References

Instead of criteria that are weighted by percentage, you may choose to assign points to each selection factor or include a range of points with associated descriptors. **For example**:

- Highly Advantageous (4 Points): Proposal demonstrates...
- Advantageous (3 Points): Proposal demonstrates...
- Not Advantageous (2 Points): Proposal demonstrates...
- Unacceptable (0 Points): Proposal does not demonstrate...

Do not include the workplan in the RFP/RFQ if you received assistance from a contractor in developing the workplan and that contractor plans to submit a bid.

- You may (and should) include summary information from the workplan about the project in the RFP/RFQ, but do not include the specific details from the workplan or the actual workplan with the RFP/RFQ.
- Additionally, if a contractor assisted in the development of the workplan, including the workplan in the solicitation documents will give that contractor an unfair competitive advantage and you cannot accept a bid from that contractor.

Make good faith efforts to solicit proposals or quotes from Disadvantaged Business Enterprises as required by 40 CFR Part 33.

- Note, this requirement is applicable to all recipients (including states) and applies to all procurement threshold amounts.
- Tribes 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.
- EPA does not currently have a directory or list of certified MBEs/WBEs, however, EPA recommends checking with the Small Business Administration, [U.S. Department of Transportation](#), or the state in which your organization intends to do business.

The RFP/RFQ must be publicly advertised on a website or through other means designed to promote full and open competition.

- EPA's recommendation is to have the bidding period open for at least 30 calendar days (see also [40 CFR 33.301](#)).

For grants with Terms and Conditions before October 1, 2024: If only one bid is received in response to the RFP/RFQ, you must negotiate profit as a separate element of the contract to make sure you get the most reasonable cost for services.

- If you intend to award an EPA-funded contract to a firm that exceeds the \$250,000 Simplified Acquisition Threshold and the contract will be awarded without price competition, you must negotiate profit as a separate element of the contract price as required by the prior version of 2 CFR 200.324(b).
 - You should ask the contractor to disclose its profit rate as part of the negotiations.
 - You must exercise judgment as to whether the profit rate is reasonable, either based on experience or researching information online (or elsewhere) about average profit rates for environmental consulting firms or other firms who conduct similar work or offer similar products.
- This provision also applies to “qualifications-based” procurement for Architectural and Engineering services where price is not a selection factor as a means of ensuring that the compensation is fair and reasonable as required by 2 CFR 200.320(b)(2)(iv). In this situation, EPA may ask for more information regarding the contractor’s profit margin at a later date.

If you select a contractor that is not offering the lowest price, you must document the rationale and basis for the contract price as required by 2 CFR 200.318(h) and (i).

- You may be required to provide this documentation to EPA’s Grants Management Officer (GMO) 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 is concerned about your organization’s compliance with competitive procurement rules.

Note, if you have already selected a contractor, but the procurement process did not incorporate the factors outlined above, then the process you completed to select a contractor may not have been compliant with the federal regulations in 2 CFR Part 200, 2 CFR Part 1500, and 40 CFR Part 33, and/or applicable statutory requirements. If this happened, it would be prudent to immediately notify your EPA Project Officer for guidance. Additionally, please note that you may need to prepare and issue a new RFP/RFQ that is compliant with federal procurement requirements to avoid an adverse finding in an audit or other review of your cooperative agreement.