



Procurement Using Federal Funds in the Congressionally Directed Spending Grant Program

PROCUREMENT: UNIFORM GRANT GUIDANCE (UGG)

- **Community grant recipients must follow their own procurement procedures, which must be documented and comply with State, local or tribal laws and regulation as well as Federal laws and Uniform Grant Guidance (UGG) procurement regulations.**
- Projects inclusive of CWSRF-eligible activities, 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.](#), or an equivalent State requirement.
- Recipients, other than state entities, that have procured a contractor(s) where the amount of the contract will be more than the micro-purchase threshold in [2 CFR § 200.320\(a\)\(1\)](#) (\$10,000 for most applicants) must select contractors (including consultants) in compliance with **the fair and open competition requirements** in 2 CFR Part 200 and 2 CFR Part 1500.
- Additionally, recipients (including states) are subject to [2 CFR § 200.322](#) and [2 CFR § 200.323](#) relating to domestic preferences and procurement of recycled materials as well as EPA's [40 CFR Part 33 Disadvantaged Business Participation](#) rule.
- Refer to EPA's [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#) as guidance.



PROCUREMENT CONT'D

COMPETITION / THRESHOLDS

1. Purchases up to the micro purchase level (generally **\$10,000**) 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 threshold if approved by cognizant Federal agency for indirect costs.



PROCUREMENT CONT'D

COMPETITION / THRESHOLDS

2. Recipients may use small purchase procedures for contracts up to the simplified acquisition threshold (**\$250,000**) 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.
 - For professional services, recipients may use email solicitations to document their files.
 - For equipment, internet searches of price catalogues documented by “screen shots” are acceptable.
 - Recipients must justify selection of contractors quoting higher prices/rates based on qualifications or technical factors.
 - Good faith efforts must be made to solicit disadvantaged businesses per [40 CFR Part 33](#).

PROCUREMENT CONT'D

COMPETITION / THRESHOLDS

3. For procurements **in excess of \$250,000**, recipients must either advertise for sealed bids or publicly solicit competitive proposals. [2 CFR 200.320\(a\)\(2\)](#).

- Sealed bidding is appropriate when detailed specifications are available & selection is based principally on price.
- Competitive proposals are typically used for professional services.
- Generally, cost/price **MUST** be used as a selection factor in evaluating proposals.



- Qualifications-based procurement may be used when acquiring services that can **ONLY** be provided by a licensed Architectural and Engineering (A/E) firm (such as when **REQUIRED** by federal (Brooks Act), state, or local law).

PROCUREMENT CONT'D

ARCHITECTURAL/ENGINEERING SERVICES

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 statement accompanying the FY 2022 and FY 2023 Consolidated Appropriations 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.”

PROCUREMENT CONT'D

ARCHITECTURAL/ENGINEERING SERVICES

What does this requirement mean?

- ✓ For A/E professional services as described above (not for other things an architect and/or engineer may do), the recipient must use competitive proposal procedures for **qualifications-based procurement where price is not a selection factor.**
 - Geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract. 2 CFR 200.319(c).
- ✓ 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.

PROCUREMENT CONT'D

SOLE SOURCE CONTRACTS

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

- The item is available only from a single source.
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
- The federal awarding agency or pass-through entity expressly authorizes non-competitive proposals.
- After solicitation of a number of sources, competition is determined inadequate.

EPA's position is that "single source" procurements are justified by copyrights, patents, and equipment maintenance agreements with manufacturers or similar arrangements.

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 market-place including consulting 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!



PROCUREMENT CONT'D

COMPETITION - IMPROPER PRACTICES

- 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 or requests for proposals **must be excluded** from competing for such procurements.”
- Practices that are **restrictive of competition** include:
 - ⊘ Working with, using sample language or templates from, accepting free services from contractors to develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals for procurements *if* that contractor will be competing for the resultant contract.
 - ⊘ Imposing unreasonable competition requirements, such as including overly narrow specifications that only one firm can meet.
 - ⊘ Making noncompetitive awards to consultants that are on retainer contracts.
 - ⊘ Discouraging other contractors from submitting an offer by naming firms.

PROCUREMENT CONT'D

CONFLICT OF INTERESTS

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.”

PROCUREMENT CONT'D

CONSIDERATIONS FOR PREPARING RFPS/RFQS

- 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.



PROCUREMENT CONT'D

CONSIDERATIONS FOR PREPARING RFPS/RFQS

Compete SMART!

Consider 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
- ✓ Profit must be negotiated as separate element for each contract in which there is no price competition



PROCUREMENT CONT'D

CONSIDERATIONS FOR PREPARING RFPS/RFQS

- Include “**options**” in the RFP/RFQ 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 Community 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.”

PROCUREMENT CONT'D

CONSIDERATIONS FOR PREPARING RFPS/RFQS

- Must have weighted evaluation factors
- 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**
 - **Reasonableness of cost/price** should 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)
- Evaluation criteria
 - Use weighted percentages;
 - Assign points to each selection factor; or
 - Include a range of points with associated descriptors

PROCUREMENT CONT'D

CONSIDERATIONS FOR PREPARING RFPS/RFQS

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
- X% - Reasonableness of cost/price proposal (e.g., rates, other available info)
- 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)

PROCUREMENT CONT'D

CONSIDERATIONS FOR PREPARING RFPS/RFQS

- If only one bid is received, you **MUST** negotiate profit as a separate element of the contract. [2 CFR 200.324](#)
 - ✓ Ask the contractor to disclose its profit rate as part of the negotiations.
 - ✓ Exercise judgment as to whether **the profit rate is reasonable**, use experience or research for determining.
 - ✓ Applies to "Qualifications-based" procurement for Architectural and Engineering services where price is not a selection factor as required by [2 CFR 200.320\(b\)\(2\)\(iv\)](#).

Note: EPA may ask for more information regarding the contractor's profit margin at a later date.



PROCUREMENT CONT'D

CONSIDERATIONS FOR PREPARING RFPS/RFQS

- As required by [2 CFR 200.318\(h\) and \(i\)](#), if you select a contractor that is not offering the lowest price, must document the rationale and basis for the contract price.
- You may be required to provide this documentation to EPA's Grants Management Officer for review as stated in [2 CFR 200.337\(a\)](#).



Resources

- [EPA's Frequent Questions for Community Grants](#)
- [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#)