

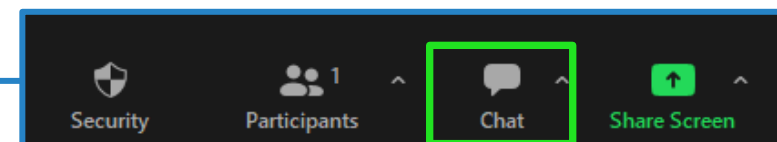
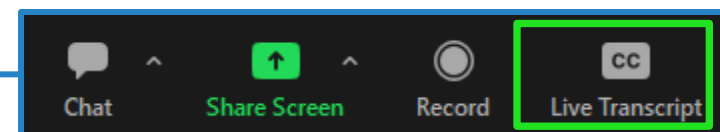


Community Grants Recipient Training Programmatic Requirements

Summer 2023

ZOOM LOGISTICS AND TECHNICAL ORIENTATION

- Please send a message through chat to Tech Support or email meetings@erg.com if you experience any technical difficulties with Zoom.
- For closed captioning of today's discussion, please select the closed captioning icon at the bottom of your screen.
- All participants are in listen-only mode now – you may ask questions in the Chat throughout the presentation, and we'll address as many as possible during the Q&A portion at the end.





OVERVIEW

Community Grants Program Overview	Roles and Responsibilities Summary	Steps Toward Funding
Receiving Community Grants Funds	Pre-Award Costs	Technical Corrections
Cost Share	National Environmental Policy Act (NEPA)	Procurement
Davis-Bacon Act	Build America, Buy America	American Iron and Steel
Disadvantaged Business Program	Resources	Questions

COMMUNITY GRANTS PROGRAM OVERVIEW

REGION/STATE	# OF PROJECTS	DOLLAR AMOUNTS
R1 (CT, ME, MA, NH, RI, VT)	156	\$208,475,378
R2 (NY, NJ, PR)	136	\$248,983,827
R3 (DE, DC, MA, PA, VA, WV)	138	\$291,064,308
R4 (AL, FL, GA, KY, MS, NC, SC, TN)	166	\$345,552,283
R5 (IL, IN, MI, MN, OH, WI)	195	\$331,697,996
R6 (AR, LA, NM, OK, TX)	88	\$215,289,664
R7 (IA, KS, MO, NE)	24	\$92,688,027
R8 (CO, MT, ND, SD, UT, WY)	30	\$55,145,240
R9 (AZ, CA, HI, NV, Pacific Islands)	160	\$302,268,524
R10 (AK, ID, OR, WA)	105	\$222,604,389
Total	1,198	\$2,313,769,636

FY 2022 and FY 2023 Consolidated Appropriations Acts: \$2.3B for 1,198 specific water infrastructure (Community Grants) projects

- drinking water, wastewater, stormwater infrastructure
- water quality protection
- [EPA Community Grants Program](#)
- [Final Implementation Guidance](#)
- [Frequently Asked Questions](#)
- [Regional Points of Contact](#)

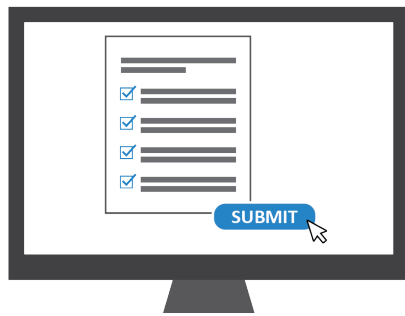
Community Grant recipients are required to follow all applicable federal requirements and must apply to receive grant funding.

COMMUNITY GRANTS PROCESS OVERVIEW



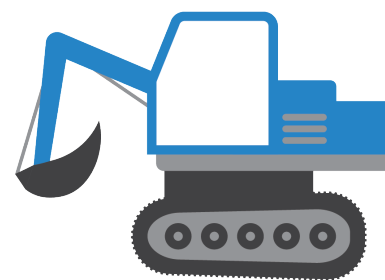
Appropriations Acts

Congressionally identified specific projects, recipients, and funding amounts to be provided through EPA's Community Grants Program.



Grant Applications

Recipients must submit grant applications via grants.gov to receive Community Grants funding.



Grant Awards

EPA reviews and processes grant applications and provides grant award agreements to recipients. Recipients complete workplan activities, reporting, adhere to grant terms and conditions.



Payment Request & Fund Drawdowns

Recipients draw funds upon EPA approval of payment requests.

ROLES AND RESPONSIBILITIES SUMMARY

EPA

- Overall support, implementation guidance and procedures
- Application and workplan review
- Technical Corrections support
- Cost share waiver review
- Grant award issuance
- Cost allowability
- Payment request, supporting documentation review
- Post-award grant monitoring and oversight

[EPA Regional Points of Contact](#)

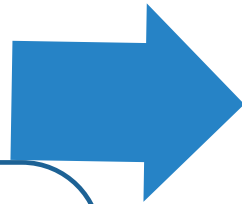
Grant Recipients

- Internal controls, policies and procedures
- Workplan, milestone schedule development
- Grant application submittal
- Technical Correction requests
- Cost Share Waiver requests
- Project, construction implementation
- Payment request, supporting documentation submission
- Applicable federal requirements adherence
- Adherence to grant-specific and [EPA's General Terms and Conditions](#)
- Reporting and recordkeeping

STEPS TOWARD FUNDING

1. Program Guidance

- **All applicable regulations & requirements necessary for successful application packages**
 - Technical Corrections, Pre-award costs, Cost Share Waivers
 - Associated Terms and Conditions applicable to each grant award



2. Application Development & Submittal

- **Application package (developed by recipient through continuous coordination with EPA)**
 - Procurement, Davis Bacon, BABA, AIS, NEPA compliant workplan
 - Pre-award costs for consideration
 - [Grants.gov](https://www.grants.gov) submission



STEPS TOWARD FUNDING, CONT'D

3. Grant Award

- **EPA Project Officers and Grant Specialists review applications**
 - ✓ Compliance with applicable grant, NEPA and procurement related regulations & requirements
 - ✓ Pre-award cost eligibility
 - ✓ Include applicable Terms and Conditions with each award
- **Grant awards issued**



4. Project Implementation

- **Recipients implement infrastructure projects to completion, EPA conducts required oversight (~5-7 years)**
 - ✓ EPA grant monitoring, on-site construction project inspections
 - ✓ Recipients submit payment requests for EPA review/approval, then draw down funding
 - ✓ Recipients submit progress reports for EPA review

RECEIVING COMMUNITY GRANT FUNDS

Recipient defines project, including its goal and need, and completes the following:

- Outlines project activities
- Develops project budget, identifying cost share funds and/or need for waiver
- Project objectives
- Anticipated environmental results

EPA, in coordination with the recipient, completes the National Environmental Policy Act (NEPA) environmental review process

Recipient completes the following:

- Develops a work plan that ensures procurement-related activities are consistent with Title 2 Code of Federal Regulations §§ 200.317–200.327
- Continues budget development, outlining any pre-award costs associated with work plan activities

EPA project officer reviews work plan

Recipient prepares grant application package and submits it via [grants.gov](https://www.grants.gov)

EPA processes application and issues award to recipient

Recipient works on the project (i.e., work plan activities) and submits reports, invoices, and supporting documentation to EPA

EPA conducts project monitoring and oversight, reviews and approves invoices

Recipient draws funds

EPA role

Grant recipient role

NEPA process/combined roles

PRE-AWARD COSTS



Pre-Award Costs

On or After October 1, 2021 (FY22) or October 1, 2022 (FY23)

Costs incurred by recipients prior to receiving grant awards will be assessed on a case-by-case basis, as part of EPA's review of the project workplan and budget.

Costs incurred prior to grant award may be allowable if the costs are in conformance with applicable federal and EPA regulations and if they are incurred on or after October 1, 2021 (FY22) or on or after October 1, 2022 (FY23).

Projects that completed construction before October 1, 2021 (FY22) or October 1, 2022 (FY23), are not eligible to receive community grant funding and will need a technical correction.

All costs incurred before EPA makes the award are at the recipient's risk.

TECHNICAL CORRECTIONS

EPA is authorized to issue Community Grant awards to entities and for projects that fall within the scope of the appropriation language. Recipients are required to ensure that their projects align with the binding text: that which is written in the [FY22 Consolidated Appropriations Act](#) and [FY23 Consolidate Appropriations Act](#).

A technical correction is needed to modify any of the Project Purpose and/or Grant Recipient details as specified in the FY22 and FY23 Consolidated Appropriations Acts.

RECIPIENTS	EPA
<ul style="list-style-type: none">▪ Consult with EPA Regional Contact to determine if a technical correction is needed.▪ Submit technical correction requests in writing, including proposed new language.▪ May proceed with new purpose and/or recipient after request is approved.	<ul style="list-style-type: none">▪ If a technical correction is needed, submits request for consultation with Congress.▪ Notifies recipient when Technical Correction requests are approved.▪ May proceed with administering projects within the scope of <u>approved</u> corrected language.

COST SHARE

CALCULATING THE REQUIRED COST SHARE AMOUNT

Recipients are required to provide a cost share from nonfederal sources unless a cost share waiver is approved by EPA. For FY22 and FY23, the cost share amount is 20% of the total grant project cost. The cost share requirement is waived for Community Grants awarded to U.S. territories and to tribal entities.

Identify the total grant project cost

- Divide the EPA contribution by .80 to calculate the total grant project cost:
- $\$100,000 \div 0.80 = \$125,000$.
- $\$125,000$ is the total grant project cost

Multiply the total grant project cost by .20 to determine the cost share amount

- Total grant project cost x .20 = required cost share amount
- $\$125,000 \times .20 = \$25,000$
- $\$25,000$ is the required 20% cost share amount

Confirm:

Total grant project cost = EPA Contribution + Cost Share Amount.

$$\$125,000 = \$100,000 + \$25,000 \checkmark$$

*Grant applications are not required to reflect costs that exceed total grant project costs as calculated above; this is the minimum total grant project cost required to receive the full FY22 or FY23 appropriation amount.

COST SHARE, CONT'D

SOURCES

COST SHARE SOURCES

- ✓ **Private sources of funding**
- ✓ **Public sources of funding**
 - U.S. Department of Housing and Urban Development (HUD), Community Development Block funds.,
 - U.S. Department of Agriculture, Rural Development funds,
 - Appalachian Regional Commission funds, and
 - Specific funds from CWSRF and DWSRF programs (including loan repayments, interest earnings, bond proceeds, and fees, or a state contribution to the SRF above the statutorily required 20 percent match.)
- ✓ **In-kind services**
 - E.g., recipient's administrative expenses for managing and overseeing the grant, provided that the expenses are not being reimbursed by the federal share of the grant award.

✗ American Rescue Plan Act (ARPA) of 2021, may not be used as matching funds under this program.

COST SHARE CONT'D

WAIVER REQUESTS

WRITTEN REQUESTS FOR COST SHARE WAIVER CONSIDERATION

- ❑ EPA supports waiving required non-federal cost share for projects that primarily serve disadvantaged communities.
- ❑ EPA is using the discretion provided by the Appropriations Acts to consider waiving or reducing statutorily required non-federal cost share on Community Grant funds when requested and appropriate.

DOCUMENTATION EXAMPLE

MY CITYTOWN meets Criterion F (Communities with $\geq 11.7\%$ Population Receiving Food Stamps/SNAP Benefits).

Source:

<https://www.census.gov/acs/www/about/why-we-ask-each-question/food-stamps/>

View Results for a County or City / Town in California (↑ change state using menu above ↑)

County

City/Town

MY CITYTOWN^{ia}

GET DATA

MY CITYTOWN

Households Receiving Food Stamp/SNAP Benefits

18.3 percent

Source: Latest ACS 5-Year Estimates Data Profiles/Economic Characteristics

Households Receiving Food Stamps/SNAP that Have Children Under 18 Years

38.7 percent

Source: Latest ACS 5-Year Estimates Subject Tables: S2201

Median Income of Households Receiving Food Stamps/SNAP

19,632 dollars

Source: Latest ACS 5-Year Estimates Subject Tables: S2201

Submit written request to the Regional EPA Project Officer for consideration.

- ✓ Include applicable Cost Share Waiver criteria, (as provided in [Final Implementation Guidance](#))
- ✓ Include pertinent supporting documentation, source data retrieved from the websites & other publicly available datasets beyond the community profile page for Cost Share Waiver Criteria (e.g., PDF copies)

COST SHARE CONT'D

WAIVER REQUESTS

EPA WILL CONSIDER COST SHARE WAIVER CRITERIA A – I (FY22), UPON REQUEST:

A. Median household income (MHI) is less than 80% of state MHI	D. Within census tracts that have a poverty rate greater than or equal to 20%	G. Within county with a Social Vulnerability Index score higher than 0.80
B. \$25,766 or less upper limit of Lowest Quintile Income	E. $\geq 3.4\%$ unemployed population ≥ 16 years in civilian labor force	H. Sewer and drinking water costs are greater than 2% of the 20th percentile household income (I.e., Lowest Quintile of Income for the Service Area)
C. $\geq 30.9\%$ population living under 200% of poverty level	F. $\geq 12.1\%$ vacant households	I. $\geq 11.7\%$ population receiving food stamps/SNAP benefits

EPA WILL CONSIDER COST SHARE WAIVER CRITERIA A – F (FY23), UPON REQUEST:

A. Median household income (MHI) is less than 80% of state MHI	C. $\geq 30.9\%$ population living under 200% of poverty level	E. Sewer and drinking water costs are greater than 2% of the 20th percentile household income (I.e., Lowest Quintile of Income for the Service Area)
B. \$25,766 or less upper limit of Lowest Quintile Income	D. Within census tracts that have a poverty rate greater than or equal to 20%	F. $\geq 11.7\%$ population receiving food stamps/SNAP benefits

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

Evaluation of how federal grant actions may affect the quality of the environment. Environmental impacts must be considered before EPA can award the grant.

NEPA: KEY INFORMATION

EPA, in coordination with the recipient, concludes the NEPA process through completion of one of the following:

- A Categorical Exclusions (CATEX) determination
- An Environmental Assessment (EA) and Finding of No Significant Impact (FONSI)
- An Environmental Impact Statement (EIS) and Record of Decision (ROD)
- EPA issues determination document even if project has undergone State Environmental Review Process (SERP) or other federal agency review.

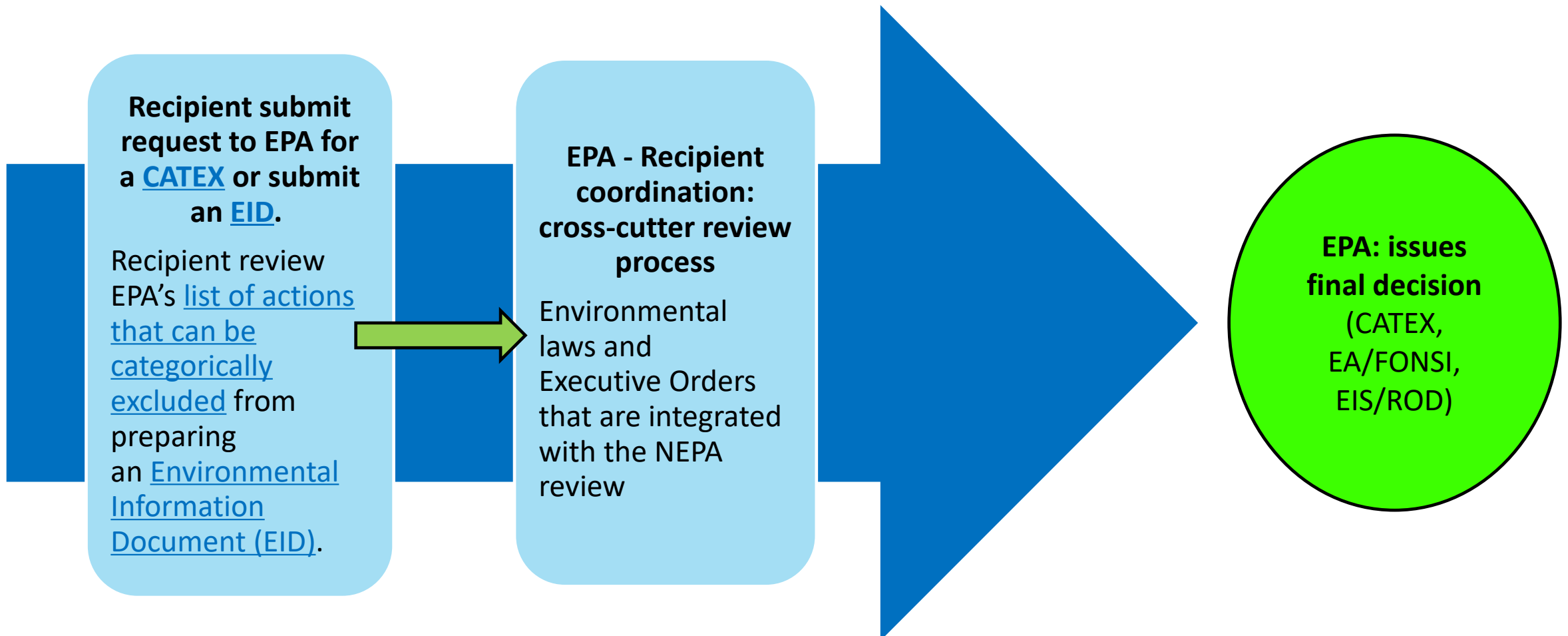
Compliance with certain federal cross-cutter authorities (i.e., Endangered Species Act, National Historic Preservation Act) must be fully completed before concluding NEPA process.

The level of review and amount of time the environmental review takes depends on the project's level of impact to resources (minor/significant, beneficial/adverse environmental impacts)

- ✓ EPA grant may fund Environmental Information Document (EID) development, other analysis for cross cutting authorities or executive orders in order to provide supporting information
- ✗ EPA grant may not fund federal document development (e.g., EA or EIS)

NEPA, CONT'D

Projects that have not undergone a prior environmental review
X SERP & SRF Co-Funded **X** Other federal agency NEPA



An EID is not needed when: the action is CATEXed or requires an EIS; or the applicant prepares/submits a draft EA and supporting documentation. EPA will request additional information from the recipient if necessary.

NEPA, CONT'D

Projects that have undergone a prior environmental review

✓ SERP & SRF Co-Funded or ✓ Other federal agency NEPA

Recipient submit documentation for EPA review

- Completed state analysis
- Documents pertaining to another federal agency's analysis for EPA review
- What if a NEPA determination was issued many years ago?

EPA independent review*

- Incorporate by reference any pertinent part of SERP into EPA's environmental document.
- Is proposed action is substantially the same?
- Does proposed action meet standards of an adequate EIS, EA, or CATEX determination?

EPA: issues final decision
(CATEX, EA/FONSI, EIS/ROD)

*EPA will request additional information from the recipient and further address any cross cutters as needed.

NEPA, CONT'D

CATEX

EPA's [list of actions that can be categorically excluded](#) from preparing an [Environmental Information Document \(EID\)](#), includes:

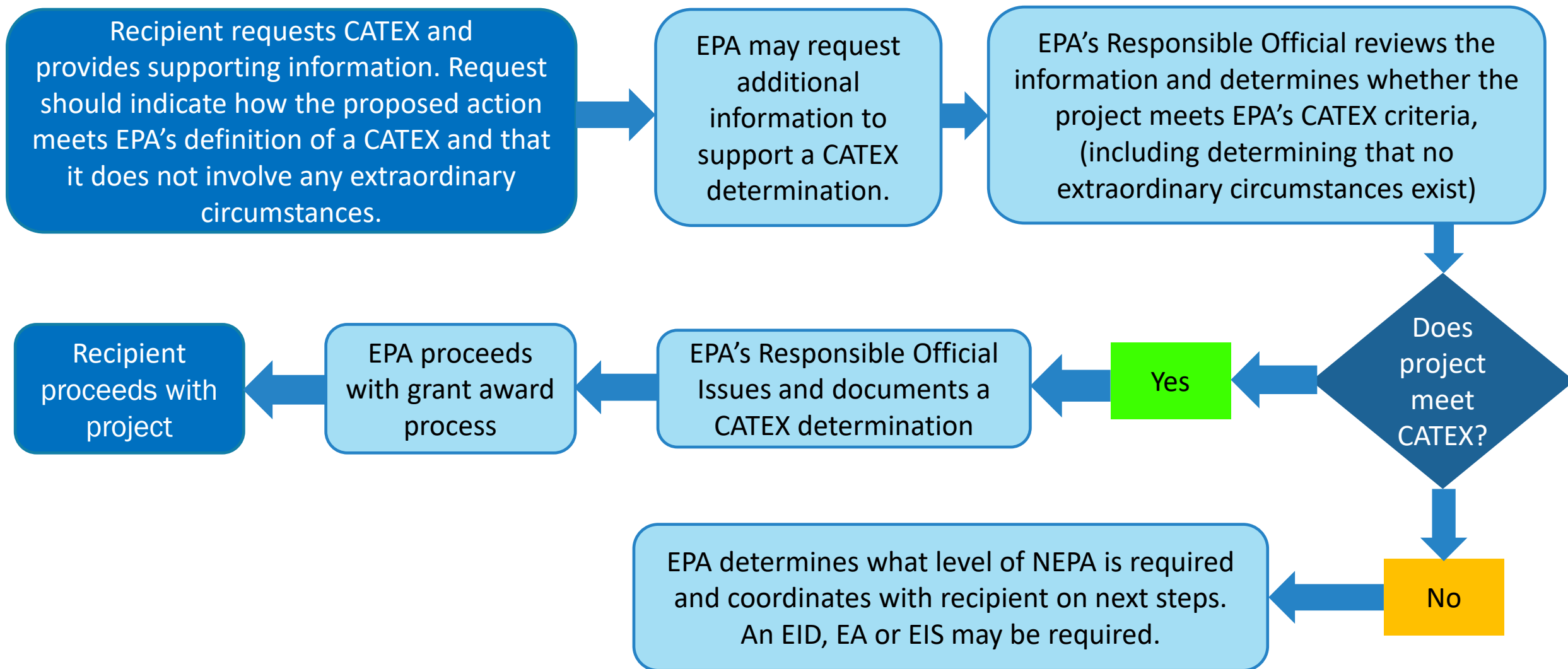
Actions relating to existing infrastructure systems (such as sewer systems; drinking water supply systems; and stormwater systems, including combined sewer overflow systems) that involve minor upgrading, or minor expansion of system capacity or rehabilitation (including functional replacement) of the existing system and system components (such as the sewer collection network and treatment system; the system to collect, treat, store and distribute drinking water; and stormwater systems, including combined sewer overflow systems) or construction of new minor ancillary facilities adjacent to or on the same property as existing facilities.

This category does not include actions that:

- ✘ Involve new or relocated discharges to surface or ground water;
- ✘ Will likely result in the substantial increase in the volume or the loading of pollutant to the receiving water;
- ✘ Will provide capacity to serve a population 30% greater than the existing population;
- ✘ Are not supported by the state, or other regional growth plan or strategy; or directly or indirectly involve or relate to upgrading or extending infrastructure systems primarily for the purposes of future development.

NEPA, CONT'D

CATEX PROCESS



NEPA, CONT'D

EXTRAORDINARY CIRCUMSTANCES

A proposed action may be categorically excluded if the action fits within a category of action that is eligible for exclusion and the proposed action does not involve any extraordinary circumstances ([40 CFR 6.204\(a\)](#))

Extraordinary Circumstances: When is a Project Not Eligible for a CATEX?

Significant individual or cumulative effects	Significant adverse air quality effects	Significant controversy about a potential environmental effect
Disproportionately high and adverse effects on minority, low income, or federally-recognized tribal communities	Significant effects on environmentally important natural resource areas - e.g., wetlands, floodplains, environmentally significant agricultural lands, aquifer recharge areas, and wild and scenic rivers	Significant effect on the pattern and type of land use, population growth and distribution, or inconsistent with approved land use plans or federal land management plans
Significant effects on listed species or critical habitat	Significant effects on historic resources	Conflict with federal/state/local government or federally-recognized Indian tribe environmental, resource protection, or land use laws

NEPA, CONT'D

EA AND FONSI

- ❑ **EA incorporates appropriate documents (including the EID) by reference and discusses:**
 - the need for the proposed action; alternatives, including no action;
 - the affected environment, including baseline conditions that may be impacted by the proposed action and alternatives;
 - the environmental impacts of the proposed action and alternatives, including unresolved conflicts concerning alternative uses of available resources;
 - coordination or consultation regarding compliance with environmental cross-cutters and identifies and describes mitigation considered, including mitigation needed to ensure the action will not cause significant impacts.
- ❑ **Finding of No Significant Impact (FONSI) is a decision document supporting a determination made by EPA that an action will not result in significant impacts.**
 - Supported by an EA and includes enforceable mitigation measures to reduce impacts below significance thresholds.
- ❑ **EPA EA and preliminary FONSI must be made available for public review for 30 days prior to taking the action. Action can proceed after responding to any substantive comments received on the preliminary FONSI, and issuance of a final FONSI, if necessary. If no substantive comments are received, the preliminary FONSI (if signed) may be considered final, and the action may proceed.**

NEPA, CONT'D

ENVIRONMENTAL CROSSCUTTERS

Environmental Cross-Cutters

Applicable to Community Grants projects

Ultimately a Federal responsibility; however, grantees may assist in carrying out cross-cutter compliance

Significant impacts to environmentally related cross-cutters could affect your level of NEPA review needed

- Wetlands – E.O. 11990/12608 and CWA Section 404
- **Threatened and Endangered Species – ESA**
- **Historic Properties – National Historic Preservation Act (NHPA)**
- Environmental Justice – E.O. 12898
- Floodplains – E.O. 11988/12148
- Coastal Zones – Coastal Zone Management Act
- Wild and Scenic Rivers
- Essential Fish Habitat
- Clean Air Act
- Safe Drinking Water Act
- ...others



NEPA, CONT'D

ENVIRONMENTAL CROSSCUTTERS: NHPA

EPA must comply with NHPA Section 106 for any “undertaking,” which is defined as a “project, activity or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including... those carried out with Federal financial assistance...”

NHPA 106 determination is required (CATEX, EA-FONSI, and EIS).
Determination: will the action affect historic properties?

NO POTENTIAL TO CAUSE EFFECTS on historic properties, assuming such properties were present

- No further Sec. 106 obligations.
- Finalize NEPA determination.
(Ex: Projects involving no construction activities)

NO HISTORIC PROPERTIES AFFECTED or NO ADVERSE EFFECT

- Submit letter **requesting concurrence** from SHPO/THPO, wait 30 days for review or objection
- Finalize NEPA determination.

ADVERSE EFFECT

- **Consult** further to resolve the adverse effect. Resolution of adverse effects often takes the form of a Memorandum of Agreement between the consulting parties.
- Finalize NEPA determination.

Recipients can initiate NHPA Section 106 consultation.

NEPA, CONT'D

ENVIRONMENTAL CROSSCUTTERS: ESA

EPA must comply with ESA Section 7 to ensure “any action it authorizes, funds, or carries out...is not likely to jeopardize the continued existence of any listed species or results in the destruction or adverse modification of critical habitat.”

ESA compliance is required (CATEX, EA-FONSI, and EIS).

Determination: will the action affect listed species or designated critical habitat?

NO EFFECTS

FWS Consultation: not required.

FWS Notification/Correspondence: not required

Documentation: EPA must document the “no effect” determination to reflect why the action will have no impacts to federally listed threatened or endangered species or their critical habitat.

MAY AFFECT, NOT LIKELY TO ADVERSELY AFFECT

FWS Informal Consultation: EPA shall submit a letter requesting concurrence on the finding from the FWS/NMFS and must wait 60 days for FWS/NMFS review.

Concurrence from FWS/NMFS concludes informal consultation.

MAY AFFECT, IS LIKELY TO ADVERSELY AFFECT

FWS/NMFS Formal Consultation: EPA shall submit a letter requesting initiation of formal consultation with FWS/NMFS. The letter must contain specific information in accordance with the regulation and for “major construction activities,” must be accompanied by a **Biological Assessment (BA)**.

- EPA shall prepare (or request the recipient to provide) a BA if the action is a “major construction activity.” The BA determines whether any listed/proposed species or designated / proposed critical habitat are likely to be adversely affected by the action and is used in determining whether formal consultation is necessary.
- Recipients can initiate ESA Section 7 consultation.

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.



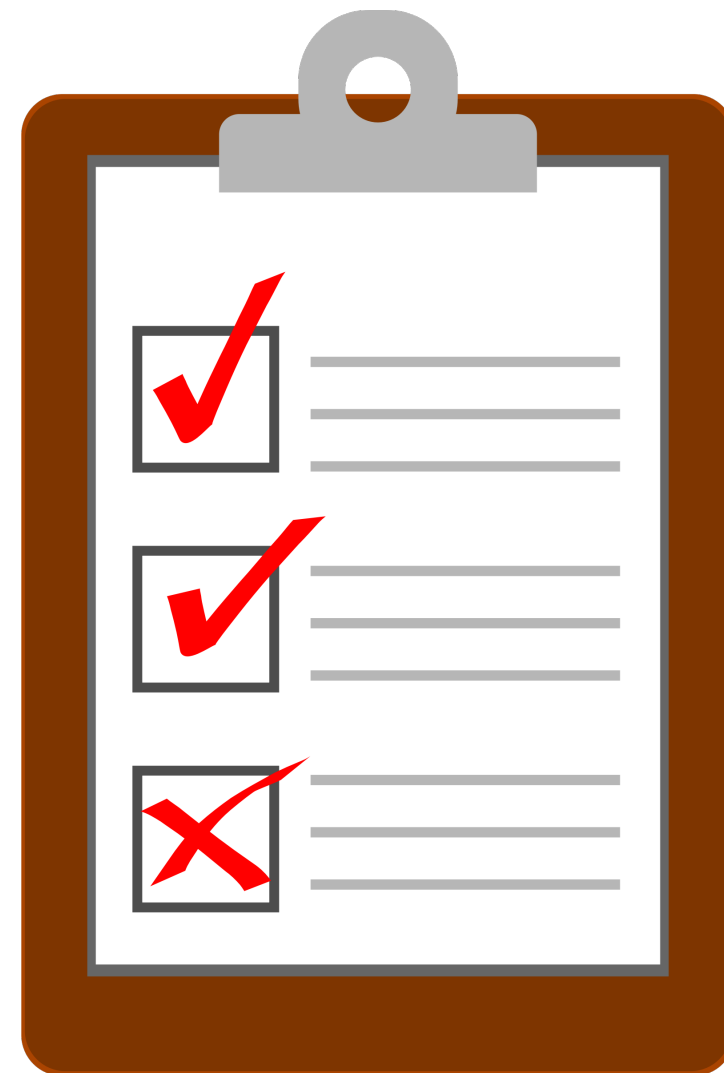
PROCUREMENT CONT'D

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

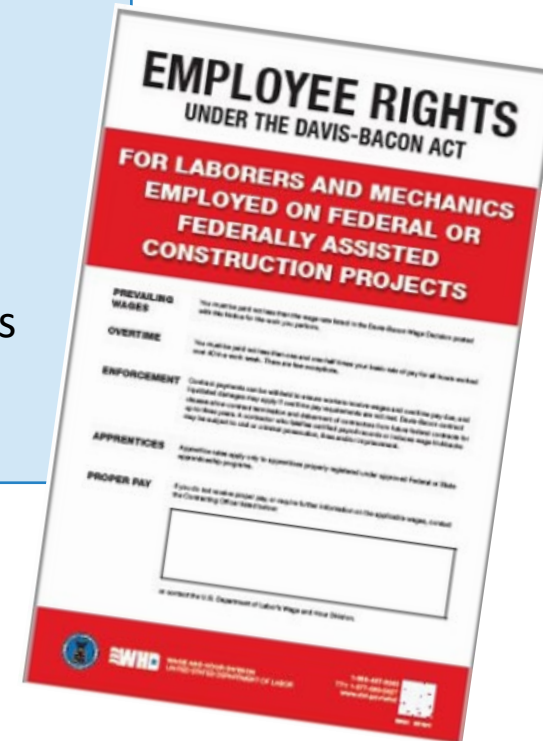
- As required by [2 CFR 200.318\(h\) and \(i\)](#), if you select a contractor that is not offering the lowest price, must document the rationale and basis for the contract price.
- You may be required to provide this documentation to EPA's Grants Management Officer for review as stated in [2 CFR 200.337\(a\)](#).



DAVIS – BACON ACT

The [Davis-Bacon Act \(DBA\)](#) requires that all contractors and subcontractors performing construction, alteration, and repair (including painting and decorating) work under federal contracts in excess of \$2,000, pay their laborers and mechanics not less than the [prevailing wage and fringe benefits for the geographic location](#), as established by the U.S. Department of Labor (DOL) .

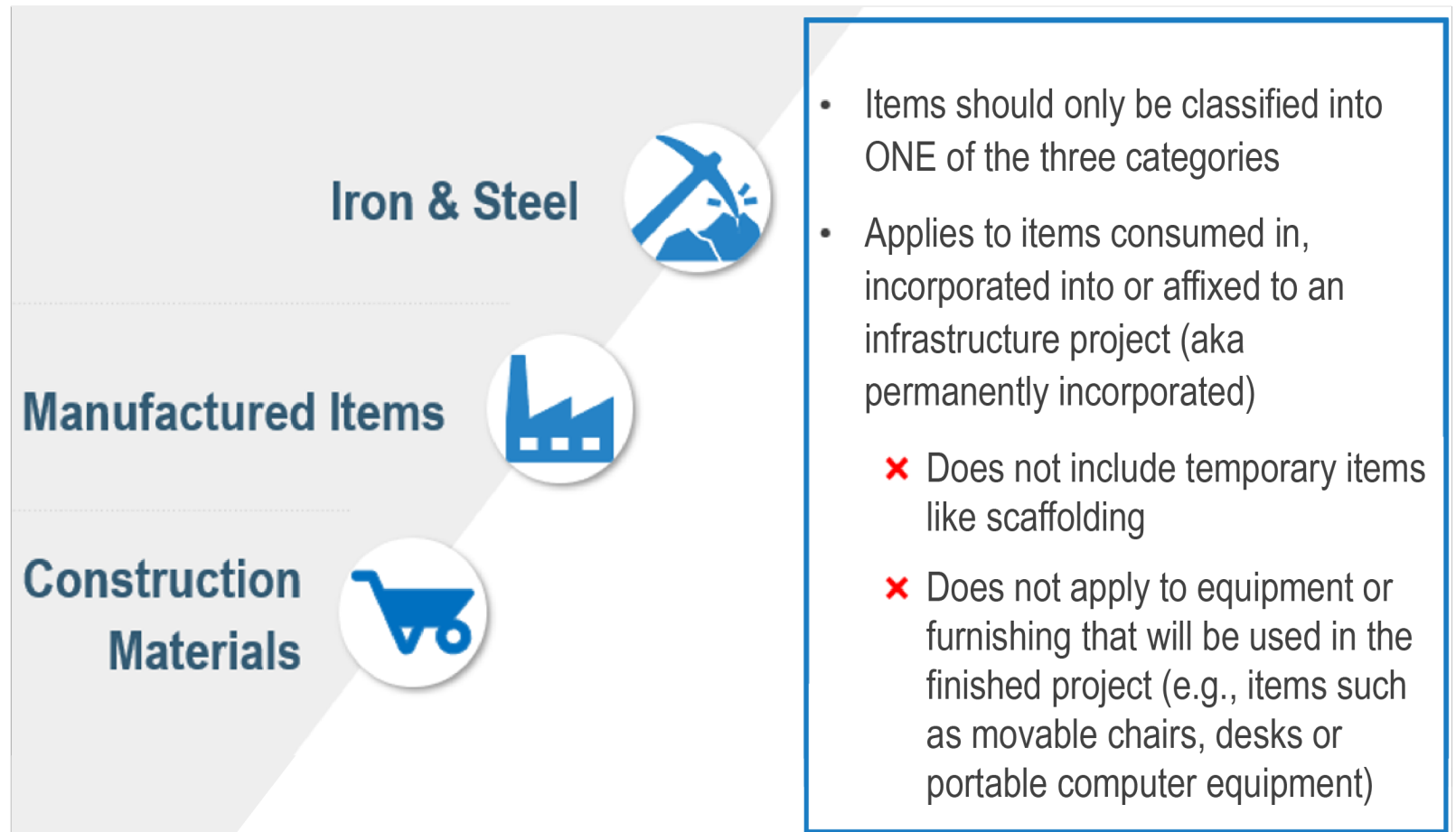
- ✓ All laborers and mechanics employed by contractors and subcontractors with job duties that are physical and manual in nature
- ✓ All contracts must include specific language: minimum wages, withholdings, payroll and basic records, subcontracts, and Contract Work Hours and Safety Standards Act requirements.
- ✓ Recipients are required to periodically conduct spot checks of payroll data for certain contracts
- ✓ Davis-Bacon poster at work site



BUILD AMERICA, BUY AMERICA (BABA)

Unless covered by a waiver, procurement plans must comply with [Build America, Buy America \(BABA\)](#) requirements prior to grant award.

- ✓ All of the iron, steel, manufactured products, and construction materials used in the project to be produced in the United States.



BABA, CONT'D

- “Project” means: Any activity related to the construction, alteration, maintenance, or repair of infrastructure in the U.S.
- BABA applies to all Federal financial assistance for infrastructure (not just BIL funding), unless covered by a waiver
 - Recipients may request project-level BABA waivers (waiver form & request letter)
 - 6-month selected programs waiver (for projects funded prior to Mar 1, 2023)
- BABA Terms and Conditions

<https://www.epa.gov/cwsrf/build-america-buy-america-baba>

Build America, Buy America (BABA)

On this page:

- [Build America, Buy America \(BABA\) Act](#)
- [Request for Information for Construction Materials](#)
- [Waiver Authority](#)

BABA Act Topics

- [BABA Act Overview](#)
- [Waivers Open for Public Comment](#)
- [Approved Waivers](#)
- [Resources](#)

Build America, Buy America (BABA) Act

- On November 15, 2021, President Joseph R. Biden Jr. signed into law the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. No. 117-58, which includes the Build America, Buy America Act ("the Act"). Pub. L. No. 117-58, §§ 70901-52. The Act strengthens Made in America Laws and will bolster America's industrial base, protect national security, and support high-paying jobs. The Act requires that no later than May 14, 2022—180 days after the enactment of the IIJA—the head of each covered Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the **iron, steel, manufactured products, and construction materials** used in the project are produced in the United States.” (Build America, Buy America (BABA) Act, P.L. 117-58, Secs 70911 - 70917).
- On April 18, 2022, the Office of Management and Budget's (OMB) Made in America Office released its [guidance for implementing the BABA Act](#)
- [BABA Act Implementation Webinar Presentation \(April 2022\).pdf](#) (1.35 MB)
- [BABA Act Office of Water Implementation Procedures Webinar \(November 2022\).pdf](#) (3.5 MB)

Office of Water Build America, Buy America Act Implementation Procedures

- EPA is releasing the “Build America, Buy America Act Implementation Procedures for EPA Office of Water Federal Financial Assistance Programs.” The memorandum provides important information to support EPA's grantees, contractors, and manufacturers in complying with BABA. BABA, which applies to all federal financial assistance programs, will bolster America's industrial base, protect national security, and support high-paying jobs.
 - [Build America, Buy America Act Implementation Procedures for EPA Office of Water Federal Financial Assistance Programs.pdf](#) (485.72 KB)

AMERICAN IRON AND STEEL (AIS)

The [American Iron and Steel \(AIS\)](#) provision requires Community Grant recipients to procure and use iron and steel products that are produced in the United States for the construction, alteration, maintenance, or repair of a public water system or treatment works.

- ✓ Include AIS language in construction contracts
- ✓ Install only domestic iron & steel products
- ✓ Document compliance
- ✓ Certification letters

- [AIS Overview](#) & [AIS Guidance](#)
- [Informational Checklist for product/project specific waiver requests](#)
- **Waiver Request:** Recipients may request project-level AIS waivers (waiver form & request letter)

<https://www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement>

State Revolving Fund American Iron and Steel (AIS) Requirement

The American Iron and Steel (AIS) provision requires Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) assistance recipients to use iron and steel products that are produced in the United States. This requirement applies to projects for the construction, alteration, maintenance, or repair of a public water system or treatment works.

The AIS provision is a permanent requirement for all CWSRF projects. The America's Water Infrastructure Act of 2018 extends the AIS provision for DWSRF projects through Fiscal Year 2023. For details, see [Legal Authority](#) below.

The appropriation language sets forth certain circumstances under which EPA may waive American Iron and Steel requirements. For details, see [Waiver Request Process](#).

On this page:

- [AIS Online Webinars](#)
- [AIS Guidance, Questions and Answers, and Training Materials](#)
- [Annual Reports](#)
- [Inquiries and Comments](#)
- [AIS Legal Authority](#)

AIS Online Webinars

Upcoming Webinars

Check back for upcoming webinars.

View Recent Webinars

- [AIS Requirement Annual Refresher Webinar \(pdf\)](#) (3.38 MB)
This webinar covers the AIS Requirement, including covered iron and steel materials, documenting compliance, and roles and responsibilities.

Recent Lunch and Learn Series

AIS Topics

- [AIS Overview and Guidance](#)
- [Waiver Requests Received by EPA](#)
- [Approved National Waivers](#)
- [Approved Project Waivers](#)
- [Draft National Waivers](#)
- [Withdrawn or Denied Waivers](#)
- [Waiver Request Process](#)

Learn about the [Build America, Buy America \(BABA\) Act Requirements](#)

RESOURCES

- **EPA Community Grants program:** The [EPA Community Grants web page](#) is updated as new information becomes available.
- **Grants Policy Resources:** [EPA grant policies](#) may affect how recipients manage and administer EPA assistance agreements.
- **EPA's [Guidance on Selected Items of Cost for Recipients](#)** provides information on the allowability of specific costs.
- The [Best Practice Guide for Procuring Services, Supplies, and Equipment Under Assistance Agreements](#) will help grant recipients (other than states) meet federal procurement requirements.
- **Grants Management Training for Applicants and Recipients:** [EPA's online training courses](#) are free and are designed to introduce potential EPA grant recipients to key aspects of the entire grant lifecycle, from preparation of an application through grant closeout.
- **Refer to [Interim General Budget Development Guidance for Applicants and Recipients of EPA Financial Assistance](#)** to learn more about cost eligibility and preparation of the budget component of the application package.



Questions

