# EPA Grants Procurement, Subawards, and Participant Support Costs Webinar
# March 27, 2024
# Frequently Asked Questions (FAQ)

Q1: Can an applicant name a consultant/partner upfront, in the grant application? For example, a consultant that they want to support them, should they win the grant.

A1: Yes. However, EPA advises against naming a consultant in a grant application unless: 1) the applicant is subject to 2 CFR 200.317 (all states and tribes covered by 2 CFR 200.317 after October 1, 2024); or 2) the amount of the consulting contract will be less than the $10,000 micro-purchase threshold (some applicants may have a higher micro-purchase threshold if they meet the requirements in 2 CFR 200.320(a)(1)(iii) through (v)); or 3) the applicant has selected the consultant in compliance with all applicable federal competitive procurement requirements, including any statutory requirements, 2 CFR 200.318 through 2 CFR 200-320, and/or EPA's Participation by Disadvantaged Business Enterprises rule at 40 CFR Part 33.

Note, naming a consultant in an application as a "partner" does not relieve applicants from complying with applicable regulatory or statutory (e.g., Brooks Act for Architectural and Engineering services) procurement requirements.

Q2: Do procurement contracts need a Unique Entity Identifier (UEI) like a subaward/subrecipient?

A2: No. Procurement contractors do not require a UEI. It is only for subrecipients.

Q3: Participant support costs mean direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences or training projects. Does that mean if we go into a participant support cost, they cannot charge or rather we cannot cover their labor cost?

A3: Yes. Program participants cannot receive stipends as compensation for their participation in a project as both a program beneficiary and an employee of a recipient or subrecipient.

Q4: NC used a coalition in our Solar for All (SFA) application. Will our coalition partners (named in the SFA application) have subawards?

A4: Yes, as long as the application includes estimated costs in the "Other" budget category for subawards and the coalition partners are eligible subrecipients under the SFA program. Note that the terms and conditions of initial SFA awards for 2% of funding to enable recipients to develop their workplans do not allow SFA recipients to use those funds for subawards.

Q5: We have an open grant with two subawards. One we have ceased using but was used only before UEI was a requirement. Do we need to return to the currently unused subaward to obtain a UEI?

A5: If your relationship with that subrecipient ceased prior to the UEI requirement, it is not required to go back and ask for it retroactively.

Q6: Can you confirm that direct recipients of EPA funding are paid in advance, not on a reimbursement level? And if we have a subrecipient, do we pay them in advance as well?

A6: For most EPA grant programs, recipients are paid in advance as provided by 2 CFR 200.305 and the General Terms and Conditions for non-state recipients require that covered recipients disburse the funds for allowable incurred costs (e.g., to pay employees, contractors and subrecipients) within 5 working days of drawing the funds down from the ASAP system.

However, for OW Congressionally Directed Spending construction grants, recipients must obtain prior EPA approval for drawdowns which is a form of reimbursement authorized by 2 CFR 200.305(b)(3).

Recipients who are pass-through entities must also pay subrecipients in advance unless they have made findings pursuant to 2 CFR 200.332 that paying the subrecipient on a reimbursement basis is necessary for proper financial management.

Q7A: What is the difference between a subrecipient and a beneficiary?

A7A: Refer to Section 4 of the EPA Guidance on Participant Support Costs which is available on the EPA Website.

Q7B: And can we create a beneficiary agreement (rather than a subaward) when awarding to a for-profit entity when the funding will aid the company in adding jobs and updating equipment and practices moving towards environmental sustainability (solar, wind, etc.)?

A7B: The answer depends on how the arrangements with the for-profit company are structured. If the payment to the for-profit firm is only for the installation of "off the shelf" pollution control equipment or solar/wind technology for generating power the transaction would be a program participation payment as indicated in Section 4 of the above referenced guidance document. However, if the payments are to reimburse the for-profit for employee labor, contracts for design and engineering, and overhead costs the transaction would be characterized as a subaward.

Q8: The Clean Ports Notice of Funding Opportunity (NOFO) references Statutory Partnerships and Collaborating Entities. Can you clarify these definitions?

A8: Please pose this question to the point of contact for the Clean Ports NOFO.

Q9: The EPA Clean Ports Zero-Emissions (ZE) NOFO states, "A partnership between an eligible private entity (as defined above in Section III.A.4.) and another eligible non-private entity (as defined above in Section III.A.1-3.) is a Statutory Partnership. The Statutory Partnership application is comprised of one eligible private entity who enters into a Statutory Partnership Agreement with one or more Statutory Partners (other eligible non-private entities). In a Statutory Partnership application, the eligible private entity is considered the grant recipient and is responsible for carrying out the grant activities if the application is selected for funding." Is this correct? Does the private entity have to be the grant recipient/lead applicant?

A9: Please pose this question to the point of contact for the Clean Ports NOFO.

Q10: Does the $10,000 micro-purchase threshold also apply to subrecipients who procure services/supplies?

A10: Yes. However, as indicated above, some entities may have micro-purchase thresholds higher than $10,000.

Q11: For the EPA Clean Ports competition, terminals are unsure if a port applicant wants to pass-through funds to a private marine terminal operator to do the work, if the port will need to follow a competitive bidding process. The EPA practice on Diesel Emissions Reduction Act (DERA) has been to allow ports to select their operator partners without a competitive process; any other approach would eliminate many proposed projects. Can the subject of competition be clarified for these applications?

A11: Please pose this question to the point of contact for the Clean Ports NOFO.

Q12: What would happen if we were unable to get three or more bids?

A12: You would need to maintain documentation that you conducted a full and open procurement competition consistent with all applicable federal requirements. Consistent with the current version of 2 CFR 200.324 in effect (not applicable to grants awarded on or after October 1, 2024), the recipient "must negotiate profit as a separate element of the price for each contract in which there is no price competition." Note, this requirement applies to qualifications-based procurement as well.

Q13: Will the restriction on Chinese ownership apply only to the applicant itself or also to any pass-through entities that might receive EPA funding?

A13: Yes, restrictions on using EPA funds to benefit Foreign Entities of Concern or 2 CFR 200.216 contained in the terms and conditions of EPA awards flow down to subrecipients.

Q14: Are slides 20, 21, and 22 also applicable to states?

A14: The competition threshold slides do not apply to states because they follow their own procurement procedures consistent with 2 CFR 200.317.

Q15: Does the three bids requirement start at $10,000 or $50,000?

A15: The competition requirements start at over $10,000 unless the recipient has a micro-purchase level above that amount that meets the requirements in 2 CFR 200.320(a)(1)(iii) through (v).

Q16: Does the grant statute override our agency's procurement process as well? We are a public water and sewer special district (local government). We have our own set of procurement processes, some of which include sole source allowances. Our procurement procedure follows the California Uniform Construction Cost Accounting Commission (CUPCCAA) which allows us to conduct informal bidding for projects under $200,000. It also only requires bids to be open for 14 calendar days rather than 30, which conflicts with Disadvantaged Business Enterprise (DBE) requirements.

A16: The Procurement Standards at 2 CFR Part 200 override any conflicting state laws applicable to local governments. If the Federal grant statute requires a specific method of procurement be followed (e.g., the Brooks Act) that statute would supersede the regulatory Procurement Standards.

Q17: For the consulting fee cap, is an LLC with a single consultant an individual or a consulting firm?

A17: An LLC with a single consultant is subject to the consultant fee cap.

Q18: Is the percentage of cost computed as contingency for unexpected increases in construction costs allowed in grant budgets?

A18: Yes, contingencies based on a percentage of construction costs are allowed for construction projects to the extent permitted by 2 CFR 200.433. EPA may consider contingencies that exceed 20% of estimated construction costs to be unreasonably high.

Q19: If the use of a sole source contract can be proven to save the project considerable amount of time and money, and the sole source contractor will not take a fee for services, would that generally be accepted by the EPA? To clarify, there would not be EPA funds paid towards the contractor, and nothing budgeted for that scope of work from the grant.

A19: EPA does not object to recipients awarding sole source contracts that will be paid for with their own funds as long as the costs for those contracts are not counted toward a cost share for the grant.

Q20: If a contractor or consultant was part of the original proposal and budget, is competition after the award required?

A20: Yes. Naming a contractor in a proposal or budget does not demonstrate compliance with the competitive procurement requirements in 2 CFR Part 200. Applicants may comply with those requirements prior to submitting their proposal if they so choose but otherwise EPA will require competition for the work if the amount of the contract exceeds the micro-purchase threshold unless there is an applicable statutory competition requirement such as the Brooks Act.

Q21A: When making the distinction that subrecipients are typically not-for-profit entities, the presupposition is that an agency is using grant funding to procure goods or services from a for-profit entity. What if this is not the case?

A21A. Refer to Appendix A of the EPA Subaward Policy for descriptions of situations in which a for-profit firm may be an eligible subrecipient.

Q21B: Can subrecipients receive pass-through funds to deploy ZE equipment and infrastructures if that equipment is to be used to help ports achieve zero-emission operations?

A21B: Please pose this question to the point of contact for the Clean Ports NOFO.

Q22A: Regarding the new Office of Management and Budget (OMB) rules and the elimination of geographic preference, what exactly does it mean to eliminate geographic preference?

A22A: It means that the prohibition on using geographic preference in evaluating bids or proposals currently in effect at 2 CFR 200.319(c) is being removed. Refer to the current regulations for a description of geographic preferences.

Q22B: When are these new rules anticipated to take effect?

A22B: October 1, 2024.

Q22C: If an award is made prior to the new rules going into effect, will the new rules not impact the award until it is modified for some reason or is there a provision like with Tribal procurement where whatever is in effect at the time of award stays the whole time?

A22C: The revised regulations will apply if a grant is amended to add additional funds after October 1, 2024. EPA has not yet made a decision on whether to apply the revised version of 2 CFR Part 200 to grants awarded prior to October 1, 2024, in other situations.

Q23: For a construction bidding process, if the lowest bidder is deemed to not be qualified by the recipient, what documentation is required to pass on that bid and move to the next lowest bidder?

A23: Consistent with the requirements in 2 CFR 200.318(i), recipients "must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price."

Q24: Can you explain the consultant fee cap?

A24: The consultant fee cap applies to payments made with EPA grant funds to an *individual consultant* by the recipient/subrecipients and their contractors, or subcontractors and was enacted as part of Public Law 111-8. EPA implements the cap in 2 CFR 1500.10. As provided in the statute and regulations, EPA grant funds may not be used to compensate individual consultants in amounts in excess of compensation at Level IV of the Federal Executive Schedule. The cap applies to compensation on an hourly, daily or any other basis that compensates the consultant for personal services. It does not apply to fixed priced contracts for specific products such as reports. Travel and overhead are not covered by the cap—only personal compensation reflected in the consultant's IRS Form 1099.

If the recipient contracts with a *consulting firm*, the cap does not apply to the salaries/compensation for the employees of that firm, so long as the recipient/subrecipient does not select who from the consulting firm works on their project and does not have direction or control over the day-to-day work of the consulting firm employee working on the recipient's project.

The cap does not apply to payments made to individual consultants by borrowers under EPA Revolving Loan Fund capitalization programs.

More guidance about the consultant fee cap is available in EPA's General Terms and Conditions and Best Practice Guide for Procuring Services, Supplies, and Equipment.

Q25: What are A/E services?

A25: Architectural and engineering services.

Q26: What are the triggering activities for Davis-Bacon Related Acts?

A26: If the statute authorizing the EPA grant program applies a Davis Bacon Related Act to activities assisted under the program, prevailing wage requirements typically apply to construction, alteration or repair work. Please refer to the DBRA Term and Condition for the grant program for additional details.

Q27: Related to purchases of supplies/micro-threshold of $10,000, my question is: I know it is a problem if the purchase (of say, computers) is broken into orders that fall below $10,000 but all ordered from the same company. However, is it a problem if the purchases are broken in smaller orders that fall below $10K but ordered from different companies?

A27: Rotating orders below $10,000 among qualified sources complies with the 2 CFR 200.320(a)(1) micro-purchase threshold.

Q28: For participant support costs, is there a guidance on stipend amounts?

A28: Refer to the EPA Guidance on Participant Support Costs which is available at the on Participant Support Costs webpage. Stipend amounts must be reasonable based on the activity the program beneficiary carries out to earn the stipend. Note that EPA staff have been instructed to question the reasonableness of stipends that exceed compensation called for in Level IV of the Executive Schedule. However, a stipend for attending a community meeting or participating in a training program should be much less than that authorized by Level IV.

Q29: Can stipends be used to compensate community members who do not have social security numbers?

A29: EPA does not provide advice on this subject. Please contact your tax advisor or the Internal Revenue Service.

Q30: What does advance payment to subrecipient mean?

A30: Please refer to 2 CFR 200.305(b)(1) and EPA's General Term and Condition, Automated Standard Application Payments (ASAP) and Proper Payment Draw Down. Pass-through entities must pay subrecipients in advance in the sense that the subrecipients do not have to pay employees, contractors or other subrecipients before the pass-through entity provides funds to the subrecipients. Once the subrecipient makes a payment request, and the pass-through entity determines that the costs covered by the request are eligible and allowable, the pass-through entity can draw down funds from ASAP and immediately transfer those funds to the subrecipient electronically. Subrecipients' payment requests, however, must be based on actual costs incurred (legal obligations to disburse funds to an employee or third party for work performed under the grant) rather than estimates of expenses. If the pass-through entity determines that the subrecipients' financial management processes are not adequate to ensure that costs are eligible and allowable or that the subrecipients are not making timely disbursements for actual costs incurred, the pass-through entity may pay the subrecipient on a reimbursement basis. Reimbursement requires that a subrecipient actually disburse funds for eligible and allowable costs and provide documentation to the pass-through entity before the pass-through entity draws down funds from ASAP for disbursement to the subrecipient. Disbursements must occur within 30 days of billing by the subrecipient as provided in 2 CFR 200.305(b)(3).

Q31: Can you develop a request for quote (RFQ) with scoring and cost proposals, review all proposals without opening cost estimates, then open cost estimates and negotiate pricing with the best qualified firm?

A31: It depends on the procurement requirements applicable to the grant program. The procurement method described above is akin to qualifications-based procurement where price is not considered in evaluating proposals. This method of procurement can only be used when the federal statute requires it (e.g., the Brooks Act); or, consistent with 2 CFR 200.320(b)(2)(iv), when procuring services that can **only** be provided by a licensed A/E firm, such as when state or local law requires work to be performed by a licensed architect or engineer. Otherwise, cost reasonableness must be a substantially weighted evaluation factor (EPA recommends at least 25%) when evaluating proposals in response to a competitive solicitation.

Q32: Is there a direct guidance that is enforceable to provide to keep contract solicitations open at least 30 days?

A32: Yes, the regulatory cite for keeping solicitations open for at least 30 days is 40 CFR 33.301(b) which provides that recipients must "...whenever possible, [post] solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date." EPA's Procurement Best Practice Guide also discusses this requirement.

Q33: Do contracts that are funded outside of grant funds (that will be used as part of a match for the grant) need to go through the outlined procurement process, or can they adhere to local and state procurement law?

A33: All costs that will be used for match or cost share must comply with Federal requirements as provided in 2 CFR 200.306(b)(4) and (7). Refer to the Cost Share coverage in the *Interim General Budget Development Guidance for Applicants and Recipients of EPA Financial Assistance*.

Q34A: If interns are considered employees, should their pay be categorized as personnel?

A34A. Yes.

Q34B: If recipients are wanting to give a housing stipend in addition to the intern pay, should that be categorized in participant support costs?

A34B: Yes.

Q35A: Can you define subsidies?

A35A: A subsidy is a payment to encourage a program beneficiary to participate in a statutorily authorized environmental stewardship program. Refer to 2 CFR 1500.1 and the EPA Guidance on Participant Support Costs for examples.

Q35B: For instance, is a capacity-based incentive to the owner of a residence to install solar technology a subsidy?

A35B: Yes.

Q36: Can you provide an example of an acceptable receipt for incentives or stipends paid to program participants? Particularly, I am interested in receipts for cash distributions to participants.

A36: A signed document in which the program participant acknowledges receipt of funds for doing something to earn the stipend such as attending a community meeting or participating in a neighborhood cleanup.

Q37A: How flexible are the budgets under EPA grant awards? For example, if the contractor cost comes in lower than estimated in the grant budget, can the difference be easily moved to another budget line item?

A37A: Funds can be re-budgeted; however, it is important to notify your EPA Project Officer and Grant Specialist of these changes. Depending on the changes proposed, a grant amendment may be required. In other cases, the changes may be made in a less formal manner. Refer to the General Term and Condition *Transfer of Funds* document all changes and approvals in your grant record.

Q37B: Can funds be moved between line items within the same budget year and between different years for multi-year grants?

A37B: Subject to the General Term and Condition *Transfer of Funds* rebudgeting between line items in the same budget years is permissible. Transfers of funds between different years for multi-year grants is more complicated and dependent on how EPA funded the grant agreement. If the grant agreement was fully funded, then movement of funds between budget years is permissible again subject to the *Transfer of Funds* term and conditions. There are restrictions on moving funds between budget years when a grant is incrementally funded. Consult your Grant Specialist and Project Officer in those situations.

Q38: States can have various criteria for what constitutes as a Minority and Women-owned Business Enterprise (MWBE). Does the EPA accept all state certified MWBEs when MWBE reporting is required on an EPA grant?

A38: Not necessarily. Refer to 40 CFR 33.204(a)(3) for criteria for certification of MBE/WBE status under state law. Entities that meet the certification criteria under at least one of the following authorizing statutes are qualified for EPA's DBE program:

**EPA's 8% Statute:** Under EPA's 8% statute (Public Law 102-389, 42 U.S.C. 4370d), an entity must establish that it is owned or controlled by socially and economically disadvantaged individuals who are of good character and citizens of the United States. The statute presumes women to be socially and economically disadvantaged individuals. Public Law 102-389, 42 U.S.C. 4370d, provides for an **8% objective** for awarding contracts under EPA financial assistance agreements to business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals, including Historically Black Colleges and Universities (HBCU) and women.

**EPA's 10% Statute:** Under EPA's 10% statute (Title X of the Clean Air Act Amendments of 1990, 42 U.S.C. 7601 note), an entity must establish that it is owned and controlled by socially and economically disadvantaged individuals who are of good character and citizens of the United States. The statute presumes HBCUs, Black Americans, Hispanic Americans, Native Americans, Asian Americans, Women, and Disabled Americans are socially and economically disadvantaged individuals. Title X of the Clean Air Act

Amendments of 1990, 42 U.S.C. 7601 note, provides for a **10% objective** for awarding contracts under EPA financial assistance agreements for research relating to such amendments to business concerns or other organizations owned and controlled by socially and economically disadvantaged individuals. **Note:** Entities not covered by one of the two statute presumptions for socially and economically disadvantaged must meet the criteria listed in 40 CFR §33.202 and/or 40 CFR §33.203 to qualify for EPA's DBE Program.

Q39: Can a private entity be a subrecipient?

A39: We presume that the term "private entity" refers to a private, for-profit business. Generally, for profit businesses are not eligible subrecipients although there are exceptions described in Appendix A to the EPA Subaward Policy.

Q40A: What circumstances trigger the need for competitive procurement?

A40A: Refer to 2 CFR 200.319, 2 CFR 200.320 as interpreted in the *Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements*. Generally, any procurement for property or services with a contract price of $10,000 must be competitive.

Q40B: Can a private fleet operator be written into a clean ports project from the beginning, or would they have to go through a request for proposals (RFP) process after the award?

A40B: Contact the Clean Ports Program at cleanports@epa.gov or visit the Clean Ports Program webpage.

Q41: What is a reasonable amount for participant support for disadvantaged community members to attend a meeting where they are providing valuable input?

A41: Refer to the EPA Guidance on Participant Support Costs which is available at the EPA website. Stipend amounts must be reasonable based on the activity the program beneficiary carries out to earn the stipend. Note that EPA staff have been instructed to question the reasonableness of stipends that exceed compensation called for in Level IV of the Executive Schedule. However, a stipend for attending a community meeting or participating in a training program should be much less than that authorized by Level IV.

Q42: Do participant support costs apply to subawards at all? For example, if the subrecipient has travel costs, would those be part of the subaward costs, or would that be participant support costs?

A42: Travel costs for subrecipient employees would be part of the subaward, and they would go in the "Other" cost category in the EPA budget.

Q43: Community liaisons are mentioned on the EPA Brownfields website under participant support costs. Will more guidance be available for the process of selecting those individuals, as it sounds like they are not consultants or contractors?

A43: Correct.Community liaisons for Brownfields grants are program participants who receive stipends rather than consultants or another type of contractor. Rules for selection of program participants are in Section 5 c. and 5 d. of the EPA Guidance on Participant Support Costs and the terms and conditions of Brownfields grants.

Q44: We have a subaward program where municipalities are partnering with non-profit organizations to fulfill work. Is the municipality allowed to charge an indirect rate on their invoice for the subaward?

A44: The answer to this question depends on the distribution base for the municipality's indirect cost rate. Some distribution bases, consistent with *Modified Total Direct Cost* as defined in 2 CFR 200.1, limit the distribution of indirect costs to the first $25,000 of subaward costs an amount that will increase to $50,000 on October 1, 2024.

Q45: Are items purchased for participants, for example trash receptacles for solid waste infrastructure for recycling (SWIFR), considered participant support costs?

A45: Yes, items purchased on behalf of SWIFR program participants are allowable participant support costs under 2 CFR 1500.1(b). However, as provided in the EPA Guidance on Participant Support Costs the appropriate budget category for these items would be supplies given that the unit cost would be less than the threshold for equipment. Direct payments to program participants are classified as "Other."

Q46: Would entertainment costs (e.g., food, music, etc.) for community awareness events be considered participant support costs?

A46: No. Allowable entertainment costs are covered by 2 CFR 200.438 and Item 3 of the EPA Office of Grants and Debarment (OGD) Guidance on Selected Items of Cost for Recipients.

Q47: What pass-through requirements get passed through to subrecipients when states award grants?

A47: There are no differences in how Federal requirements flow down to subrecipients under pass-through grants to states and other types of recipients. All pass-through entities are subject to the flow down provisions in 2 CFR 200.332.

Q48: Are there any special considerations for design-build contracts?

A48: Yes! The EPA has a regulation that speaks directly to design build contracts: 2 CFR 1500.11. Additionally, we discussed considerations for design-build contracts in detail on the Procurement, Subawards, and Participant Support Costs Webinar FAQ.

Q49: Could you use a subsidy to help a homeowner pay to get their septic tank pumped?

A49: Yes, provided the activity is eligible for funding under the grant program, the EPA approved scope of work encompasses subsidies for septic tank maintenance, and the terms and conditions include program participation criteria. Refer to the EPA Guidance on Participant Support Costs.

Q50: If a state has a grant program issuing subawards, are the subrecipients required to follow procurement/competition requirements if the subrecipient works with a construction contractor?

A50: Yes. State subrecipients other than state agencies or, after October 1, 2024, tribes, must follow the requirements in 2 CFR 200.319 and 2 CFR 200.320 for competition in procurement.

Q51: If the amount of participant support costs to be transferred to another budget line is less than 10% of the overall award (usually the threshold for requesting permission to shift funds from one part of a budget to another), do we need to obtain approval? In other words, are participant support costs an exception to the often-applied guidance that permission is only required when the amount to be shifted is less than 10% of the overall award?

A51: You must obtain prior approval from EPA's Grants Management Officer to transfer any amount of participant support costs to other budget categories as provided in 2 CFR 200.308(b)(5). Approval may be provided via an Informal Modification (i.e., email) unless the amount of the transfer exceeds 10% of the amount of the overall award. Transfers of 10% or more require a Formal Amendment if the amount of the award exceeds the Simplified Acquisition Threshold (currently $250,000) and the grant is not for a Continuing Environmental Program subject to 40 CFR Part 35, Subpart A and B. Check in with your EPA Project Officer and Grants Specialist.

Q52A: If you are issuing an RFP that includes a task that requires a professional engineer (PE), such as the creation of a Preliminary Engineering Report, and it also includes more general construction services that would not have to be a PE, would you bid the PE services as a qualifications-based selection and the other parts as price competitive?

A52A: Yes. However, there are variances in grant programs as whether qualifications-based procurement of the PE services is required or discretionary. For instance, certain grants under the Congressionally Directed Spending grant program administered by the Office of Water have a statutory requirement to conduct qualifications-based procurement for certain architectural and engineering activities as enumerated in the Clean Water Act at 33 U.S.C. § 1382(b)(14) ("program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services").

Absent a statutory method of procurement requirement such as that described in the previous paragraph, EPA's position is that under 2 CFR 200.320(b)(2)(iv), "qualifications-based procurement," where price is not a factor, may be used when acquiring services that can only be provided by a licensed A/E firm; such as when state or local law requires that an A/E firm develop specifications for construction work. However, the qualifications-based approach is optional unless state or local law prohibits the use of price in procuring A/E services. Further, as stated at 2 CFR 200.320(b)(2)(iv): "The [qualifications] method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort."

Q52B: In this case, does a single firm have to provide two different bids, one for the qualifications and the another for all the other work?

A52B: The answer to this question depends on how the grantee structures its procurement. A grantee may require that firms submit one bid for the A/E services and another for general construction services. Alternatively, a grantee may require that firms submit a consolidated bid for A/E and general construction services but evaluate the two types of services separately using price as a selection factor for the general construction services component of the bids.

Q52C: Are there two different review processes?

A52C: Some options the entity has are: 1) evaluate A/E services separately using a qualifications-based process; 2) issue a separate contract for the A/E services using a qualifications-based process; or 3) Specify that the professional design services may be provided by a subcontractor that the prime contractor selects in compliance with state/local law.

Q53: Can you explain where the costs for bins go, in reference to SWIFR grants? Does that cost go in supplies although the recipient is covering the cost for residential use?

A53: Answer depends on who will purchase the bins. If the SWIFR recipient purchases the bins and provides the bins to the program beneficiary, the costs are categorized as "Supplies". If the recipient provides the program beneficiary with a subsidy or rebate to purchases the bins themselves the costs are categorized as "Other." Refer to Section 7 of the EPA Guidance on Participant Support Costs,

Q54: Are individual consultants working under their own business entity (like an LLC) always under procurement or could they potentially be a subrecipient?

A54: Individual consultants are not eligible subrecipients (except in extremely rare cases) and their services must be procured under the 2 CFR 200.319 and 2 CFR 200.320 procurement procedures and are subject to the 2 CFR 1500.10 consultant fee cap. The only exception would be a situation described in Appendix A to the EPA Subaward Policy in which a recipient provided the consultant with a subaward for improvements to a building the consultant owns to reduce pollution (e.g., a subaward to install solar technology or energy efficiency upgrades). These types of improvements, however, are typically funded as participant support cost subsidies or rebates under 2 CFR 1500.1 and the EPA Guidance on Participant Support Costs.

Q55: Would participant support costs be an appropriate category for a marine engine replacement including equipment, salary, and miscellaneous costs?

A55: The transaction you described would be a subaward rather than participant support costs. Refer to Section 4 of the EPA Guidance on Participant Support Costs.

Q56: Can you pay a contractor, then ask for reimbursement?

A56: Yes.

Q57: Can subrecipients receive services from for-profit companies and/or individual consultants? For example, a company that prints fliers or a graphic designer.

A57: Yes, as long as those services are competitively procured consistent with all applicable statutory and/or regulatory requirements.

Q58: Can non-working hours that are charging only 50% of their time to the EPA award, for leave, etc., be prorated to be allocated to the EPA award?

A58: Yes. Fringe benefits may be allocated to an EPA award in proportion to the amount of time the employee works on the EPA funded project. Refer to 2 CFR 200.431(d).

Q59: We have participant support costs that will be administered via a subaward and were budgeted within the subaward amount. Would the subawardee need to follow these participant support costs guidelines for documenting these costs?

A59: Yes.

Q60: Will funds paid to participants in community advisory committees be taxed?

A60: EPA does not provide advice on tax matters. You should consult with your organization's tax advisor, state or local taxing authorities, or the Internal Revenue Service.

Q61: When the speaker said that states do not have to follow the timely disbursement of funds rules, does that include county/city governments or just state governments?

A61: Just state governments as provided in 2 CFR 200.305(a). County/city governments are covered by 2 CFR 200.305(b) and EPA's General Term and Condition, Automated Standard Application Payments (ASAP) and Proper Payment Draw Down.

Q62: If we have a professional service agreement with a PE/AE company that provides services/studies, do we still need to bid the project out?

A62: It depends on what procurement processes you followed to enter into the professional service agreement with a PE/AE company. For instance, if you conducted a competition for the PE/AE services that meets any statutory requirements (such as those applicable to certain OW-administered Congressionally Directed Spending/Community Grants) or the requirements of 2 CFR 200.320(b)(2)(iv) within the last 5 years, then EPA may accept that competition as meeting applicable statutory/regulatory requirements.

Q63: We use paper checks. I am concerned about drawdowns and the 5-day rule. Who to contact to get that exception?

A63: Contact the Grant Specialist for the agreement and work with the GS to submit an "undue burden" exception request to the Grants Management Officer. Refer to EPA's General Term and Condition, Automated Standard Application Payments (ASAP) and Proper Payment Draw Down.

Q64: Our non-profit is a subawardee on an EPA grant. We are staffed by a for-profit consulting firm through a management services agreement negotiated annually. The competitive bid process for that contract occurred over 10 years ago. Would our non-profit have to open a competitive RFP before using the EPA grant to pay for these contractual staffing costs?

A64: Yes. A bidding process that took place 10 years ago is "too stale" and beyond the 5-year window for using existing contracts described in EPA's Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements in section 3. Long Term Contracts. Additionally, for the procurement to comply with the full and open competition requirements in the 2 CFR Part 200 Procurement Standards, no one from the for-profit consulting firm can be involved in the development of the RFP, the evaluation of offers, the selection of the contractor, and the management of the contract. For more information, refer to 2 CFR 200.318(c), 2 CFR 200.319, 2 CFR 200.320, and EPA's Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements.

Q65: Do these rules of procurement or subaward apply to set-aside activities in state revolving funds?

A65: Please pose this question to the appropriate State Revolving Fund point of contact.

Q66: Do contractual services used to meet the non-Federal cost share for community grants for water infrastructure projects need to be procured in compliance with the Procurement Standards in 2 CFR Part 200? Or do they adhere to state laws for procurement?

A66: It depends on the type of community grant. Please pose this question to your regional Community Grants point of contact. The points of contact list is available on the EPA Community Grants - Points of Contact webpage.

Q67: Is local preference allowed for non-tribal entities?

A67: It depends on which version of 2 CFR Part 200 applies. For grants awarded prior to October 1, 2024, consistent with the version of 2 CFR 200.319(c) in effect prior to that date, both tribal entities and non-tribal entities must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Additionally, consistent with version of 2 CFR 200.319(c) in effect prior to October 1, 2024, "When contracting for architectural and engineering (A/E) services, 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."

The prohibition on using geographic preference as an evaluation factor will be removed for grants awarded on or after October 1, 2024. EPA may provide additional information on this subject at a later date.

Q68: Can you elaborate on § 200.320 Methods of Procurement? Is the micro-purchase threshold $50,000 or $10,000?

A68: Consistent with the definition of micro-purchase threshold in 2 CFR 200.1 and under 2 CFR 200.320(a)(1), the micro-purchase threshold is generally $10,000 for most non-federal entities. However, some non-federal entities may have a higher threshold than $10,000 (to include up to $50,000 or higher) consistent with the requirements in 2 CFR 200.320(a)(iv), (v).

Q69: Is there a limit on allowable participant support costs such as stipends paid to individuals or organizations for participating in community meetings or other outreach activities?

A69: Yes, all participant support cost payments must meet the requirements for necessity and reasonableness in 2 CFR 200.403 and 200.404. EPA uses the compensation limit for individual consultants specified in 2 CFR 1500.10 (Level IV of the Federal Executive Level) as a benchmark for determining whether stipend payments are reasonable. Participant support costs are payments to program participants and program beneficiaries that do not include reimbursement for organizational personnel, indirect costs, and services of contractors. For more information, refer to section 4 of the EPA Guidance on Participant Support Costs which outlines factors for distinguishing between PSCs and Subawards.

Q70: Would the use of a purchasing co-op count as fulfilling the competitive procurement requirement?

A70: Yes, if the goods and services are purchased competitively. The federal procurement standards at 2 CFR 200.318(e) encourage the use of cooperative purchasing where appropriate. Note that in addition to complying with competitive procurement requirements in 2 CFR Part 200 the contracting process must adhere to EPA's 40 CFR Part 33 Disadvantaged Business Enterprise Rule and applicable statutory requirements such as Davis-Bacon Related Acts and Build America, Buy America.

Q71: How does the requirement for disbursement of EPA funds within 5 business days of drawdown apply to a recipient that does not have electronic payment abilities?

A71: Contact the Grant Specialist for the agreement and work with the GS to submit an "undue burden" exception request to the Grants Management Officer. Refer to EPA's General Term and Condition, Automated Standard Application Payments (ASAP) and Proper Payment Draw Down.

Q72: If a scope of work is not funded by EPA funds, do procurement regulations apply?

A72: It depends. If you are intending to use this work toward a required cost-share/match requirement, contractors must be procured in compliance with all applicable federal requirements. Otherwise, no, federal procurement standards (including those in 2 CFR Part 200), apply to work that is not funded by EPA funds. However, please be aware that statutory requirements (such as Davis-Bacon; Build America, Buy America; and American Iron and Steel) may apply to the non-federally funded work that is a part of a Federally funded project. Recipients should contact their EPA Project Office for details.

Q73A: For time and materials contracts, which tend to be common with some grantees, what considerations would be looked at in determining no other contracting instruments were available?

A73A: Consistent with 2 CFR 200.318(j), the determination that "no other contracting instrument" is available is up to the grantee; however, in certain circumstances, EPA may look at what led the grantee to the determination that "no other contracting instrument" is available (e.g., How do you know no other contracting instrument is available? Is the determination based on market research?). In addition, the grantee may only utilize this contract type "if the contract includes a ceiling price that the contractor exceeds at its own risk." And, further, "the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls."

Q73B: Would requirements by local/state governments restricting contracting types to time and materials be relevant?

A73B: Yes, but only to the extent that local/state requirements are consistent with 2 CFR 200.318(j) in the case of non-state recipients. State recipients (including agencies) follow state procurement policies for time and materials contracts as provided in 2 CFR 200.317.

Q74: If contractor's name cannot be included in the proposal, does that restriction also apply to subawardee in the proposal?

A74: No. Applicants can name eligible subrecipients (which rarely include for-profit firms and never include individual consultants) in their proposals. Note, however, that EPA does not prohibit applicants from naming contractors in their proposals as long as the

contractor has been selected in compliance with the competitive procurement requirements in 2 CFR Parts 200 and 1500. EPA does not recommend or encourage this practice; however, it is not prohibited.

Q75: How may the subawardee vs contractor apply to fleets? Can grant funding be allocated to motor carriers as subawardees to electrify drayage trucks and therefor advance zero emission operations at the ports, but who are not providing a good or service director to the applicant agency themselves?

A75: Please pose this question to the EPA Project Officer for your Ports program grant. There are program specific factors that we cannot address here.

Q76: You distinguished between "states" and "universities" with regard to following state procurement policies and procedures under 2 CFR 200.317. What about "state universities?"

A76: The answer depends on two factors. 1) whether the "state university" is actually an agency or instrumentality of the state government under state law and, 2) whether the state university used the state purchasing system or the university's own system. If the state university is an agency or instrumentality of the state government and the transaction at issue was handled by the state purchasing system, then 2 CFR 200.317 applies. Otherwise, the state university is subject to the Federal competition rules in 2 CFR 200.318 through 2 CFR 200.320.

Q77: If part of the application includes electric vehicle drayage trucks that fleets commit to purchase, are these administered as subawards? Or does this require an RFP and is a procurement contract?

A77: We need more information. If the recipient will provide funds to fleet operators to purchase EV drayage trucks and funding includes more than the cost for the vehicles (fleet personnel, overhead costs, vehicle servicing etc.) then the transaction could be structured as a subaward in which the recipient compensates the fleet operator for direct and indirect costs (no profit). Alternatively, the recipient could provide the fleet operators with rebates or subsidies to cover all or part of the purchase price of the EV drayage trucks as participant support costs. Competitive procurement would not be required in either case although the requirements in 2 CFR 200.404 for arms-length business dealings and prices that reflect market rates apply.

Q78: When EPA policies say, "EPA approval," who at EPA can approve? Is it the Project Officer?

A78: The Grants Management Officer or Award Official. Project Officers cannot approve financial transactions.

Q79: If a consultant was hired competitively to complete preliminary designs, it sounds like they are not allowed to competitively bid on finalizing the designs or implementing the construction of them? Is that correct?

A79: Probably. We assume from the context of this question that the preliminary design the consultant prepared would be used as specifications for bidding out the subsequent final design and construction work. The general rule, as provided in 2 CFR 200.319(b), however, is that: "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." If the practice you are describing conflicts with that prohibition, then it is not allowed.

Q80: Any advice on how to ensure compliance with Build America Buy America (BABA) requirements? Aside from putting it into the contracts, is there anything grantee can/should do to monitor the compliance with this?

A80: Information on Build America, Buy America requirements is available on EPA's Build America, Buy America website. Grantees should obtain certifications from vendors that the items they are procuring comply with BABA.

Q81A: For the "Selected Items of Cost," in addition to providing a robust budget justification, do you recommend requesting explicit approval?

A81A: The EPA Award Official's approval of a budget justification that provides a precise description of the item of cost requiring prior approval is sufficient. Refer to Section I B. "Prior Approval" of the *Interim General Budget Development Guidance for Applicants and Recipients of EPA Financial Assistance*.

Q81B: If our budget is approved, do we risk these expenses being classified as unallowable at closeout?

A81B: No, provided the information in the budget justification is accurate and the costs otherwise meet the requirements for allowability in the Basic Considerations of the 2 CFR Part 200, Subpart F Cost Principles.

Q82A: When are joint RFP / competitive procurements appropriate?

A82A: The grantee is responsible for deciding whether a joint solicitation is appropriate for their procurement. However, 2 CFR 200.318(e) does indicate some circumstances where a joint solicitation may be appropriate, i.e., "the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of **common or shared goods and services**."

Q82B: For example, if the prime grant recipient and a subawardee need the same services related to the grant, is it appropriate to run a joint competitive procurement process for efficiency?

A82B: Yes.

Q83: We are purchasing equipment and supplies off of a State Bid List. Are there any issues with this which we should be aware of?

A83: While the federal procurement standards at 2 CFR 200.318(e) encourage the use of cooperative purchasing where appropriate (such as purchasing equipment/supplies off of State Bid Lists), consideration must also be given to the fact that the state contracting process must adhere to EPA's 40 CFR Part 33 Disadvantaged Business Enterprise Rule and applicable statutory requirements such as Build America, Buy America.

Q84: If my organization has a micro-purchase threshold of $50,000, do we just need to ensure our audit has no findings and a clear procurement policy? (2 CFR 200.320) Or must we get our cognizant agency's approval?

A84: No adverse audit findings are sufficient to establish a $50,000 micro-purchase threshold as provided in 2 CFR 200.320(a)(1)(iv)(A).

Q85: We received a multi-year grant and intend to contract with a for-profit project partner who will help us implement a training program for less than $10K per year for 3 years. Does that keep us under the competition threshold?

A85: No. As provided in 2 CFR 200.320(a)(1)(i) micro-purchases must be equitably distributed among qualified sources to the extent practicable. There are many firms and individual consultants who have expertise in implementing training programs.

Q86: Do EPA Marking and Branding Standards apply to public relations/participant support expenditures?

A86: No.

Q87: Are there any trainings planned specifically for Solar for All?

A87: EPA has awarded All Solar for All grants. Please contact your SFA Project Officer for information on training opportunities.

Q88: Where Federal and State grant funds are used, does DBE apply to the whole project or just the portion the federal funds pay for?

A88: Unless state (and/or local) law dictates a broader application, EPA's DBE requirements at 40 CFR Part 33 apply to the federally funded portion of the project. This is consistent with 40 CFR 33.102, which states the DBE requirements at 40 CFR Part 33 "apply to **procurement under EPA financial assistance agreements** performed entirely within the United States, whether by a recipient or its prime contractor, for construction, equipment, services and supplies."

Q89A: How do you recommend incorporating required cost match for contracted services?

A89A: The recipient's financial records must differentiate between amounts the contractor is paid with EPA funds and amounts the contractor is paid with non-Federal funds or the value of goods/services the contractor donates to the project. Refer to 2 CFR 200.306.

Q89B: Should cost match requirements be covered in a Memorandum of Understanding?

Q89B: EPA does not prescribe a particular form for documenting cost share contributions.

Q90: If there are three owners/partners and one is managing the project and one received the funds, can the funds go directly to the managing partner and if yes, how does that need to be tracked and by who?

A90: We do not have enough information about the project or the legal relationships between the owners/partners to provide a definitive answer. However, the brief description in the question indicates that there may be conflict of interest concerns with the proposed arrangements.

Q91: This is a question relates to a Community Change Grant project. If the grantee hires a construction manager for an EPA grant funded project but the construction manager's scope is NOT grant funded, does the construction manager's contract need to be competitively bid?

A91: The procurement standards in 2 CFR Part 200 and 1500 (and EPA's DBE Rule at 40 CFR Part 33?) do not apply to contractual services that are not funded with EPA financial assistance. However, state and/or local law may speak to procurement requirements. Additionally, while the federal procurement standards do not apply, federal requirements such as Build America, Buy America and/or Davis-Bacon might.

Q92: If, under an EPA program like Solar For All, a pass-through entity sought to award a bridge loan to an affordable multifamily building owner to support installation of a solar PV system on their property, would the building owner be considered a subrecipient? Or a contractor?

A92: In the SFA program, the bridge loan to an end user may be a participant support cost based on a class exception to 2 CFR 1500.1. Please contact your SFA Project Officer for further guidance.

Q93: Regarding the consultant fee cap, what about consultants who are not quasi-employees, like technical experts/sole practitioners? We are in a high cost of living area, and the consultant fee cap applying to individuals and not firms seem inequitable.

A93: The consultant fee cap described at 2 CFR 1500.10 is statutory, and EPA cannot waive or adjust the cap although the Level IV Executive Level rate does have a geographic cost of living component. The cap does apply to the services of individual technical experts

Q94: What fair share objective should apply while new ones are negotiated, old prior objectives?

A94: Please pose this question to your EPA grant point of contact.

Q95: If a state determined a grantee's solicitation for professional services fall under state regulations requiring an RFQ (for example, determining a solicitation in North Carolina fell under the state's Mini-Brooks Act), would EPA's guidance to consider cost override the state's determination?

A95: Yes, unless the professional services can only be provided by a licensed architectural or engineering firm such that the procurement is covered by 2 CFR 200.320(b)(2)(iv) which authorizes qualifications-based procurement. For example, for site assessment work under a Brownfields grant A/E firms are one potential source for a Qualified Environmental Professional (QEP) service but 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. Price must be a significant factor in procuring the services of a QEP. However, for a Brownfields cleanup grant if state or local law requires that an A/E firm prepare the specifications for the remedial work then the state's Mini-Brooks Act would apply to the procurement.

Q96: When did the Consultant Fee Cap statutory requirement become effective? Was it upon the last EPA reauthorization?

A96: The Consultant Fee Cap was enacted in 2009 in Public Law 111-8 through a permanent restriction on the use of EPA's appropriated funds.

Q97A: Suppose a subrecipient has a construction contractor installing a solar array over a six-month period and the contract calls for Percent of Completion payments across the life of the project, can the subrecipient get reimbursed for payments made?

A97A: Yes, provided the terms of the contract ensure that the percentage of completion method of payment reflects an accurate estimate of actual costs the contractor incurred.

Q97B: What documentation is needed?

A97B: Invoices from the contractor.

Q98: Would a nonprofit organization whose mission is focused on providing programming, services, and regranting dollars to native communities fall under the tribal procurement exception?

A98: No. The nonprofit must follow the Procurement Standards in 2 CFR Part 200. Note that our answer presumes that the nonprofit organization is not an inter-tribal consortium as defined in 40 CFR 35.504.

Q99: Can a State-certified MWBE qualify as DBE for federal purposes?

A99: Possibly. Please refer to 40 CFR Part 33, Subpart B for EPA's DBE certification requirements.

Q100: Participant support costs are defined as payments to individuals. What about purchases for participants to be able to participate? Are these purchases made by the recipient considered participant support costs?

A100: Participant support costs are not necessarily payments to individuals. As provided in the definition of *Participant support costs* in 2 CFR 200.1 recipients may make participant support cost payments "on behalf of" program participants. Additionally, EPA's expanded definition of *Participant support costs* in 2 CFR 1500.1 includes subsidy and rebate payments to businesses to encourage participation in environmental stewardship programs. EPA's Guidance on Participant Support Cost specifies the appropriate budget category for payments made on behalf of program participants. For example, if a recipient purchases recycling bins for community residents the costs would be included in the supply category for the SF 424 budget.

Q101: Can you please clarify what the "grant statute" refers to when referenced in this webinar?

A101: The grant statute is the federal law that authorizes the grant program.

Q102: Is there any relationship besides a subrecipient or procurement relationship where a pass-through entity can give funds to another entity?

A102: Pass-through entities may be able to provide participant support cost payments to program participants. Examples include stipends or travel support to enable individuals to participate in community meetings or subsidies/rebates to encourage businesses to participate in environmental stewardship programs. Refer to the EPA Guidance on Participant Support Costs.

Q103: If a borrower/recipient/prime contractor uses COSTARS or PENNBIN to obtain supplies, equipment, or workers, do they have to use the DGS website to obtain WBE and MBE names to email for solicitation?

A103: Please pose this question to your EPA grant point of contact. We need more information regarding the meaning of the acronyms.

Q104: Do sub-recipients have to follow procurement standards for acquiring goods/services?

A104: Yes.

Q105: Will there be specific guidance on these topics for Solar For All grant recipients given the atypical nature of programming funded through that program?

A105: EPA has awarded All Solar for All grants. Please contact your SFA Project Officer for information on specific guidance for that program.

Q106: Can I have an applicant, partner, and a separate Statutory Administrator (an Historically Black College and University)?

A106: We need more information to answer this question.

Q107: What is the difference for how one deals with American Iron and Steel (AIS) vs. BABA? Don't they both require the same documentation? BABA merely includes even more (lumber, components, assembled items, etc.), so wouldn't AIS just be a sub-set of BABA?

A107: American Iron and Steel requirements only apply to a subset of grants administered by EPA's Office of Water. For questions about the nuances between AIS and BABA and how those nuances apply to your grant, please pose this question to your EPA grant point of contact.