

# Procurement Using Federal Funds in the Brownfields Program

EPA R6 Brownfields Conference

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# Important Caveats



- This training is designed to provide recipients of EPA Brownfields Grants with information on EPA's policies and practices for encouraging recipients to comply with **the Uniform Grant Guidance (UGG)** as it pertains to competitive procurement.
- The regulations take precedence in the event of a conflict with any of the materials contained on these training slides.
- For **project-specific procurement questions**, please contact your project officer or Regional EPA Brownfields contact.



# Procurement Updates

# UGG Updates

## **Procurement**

- Giving Tribal Nations the same status as states under [2 CFR 200.317](#) such that Tribal Nations will follow their own policies and procedures for procurement competitions. [\*Tribes will be subject to the procurement standards in effect at the time of award].
- Removing existing prohibition on geographic preference contained at [2 CFR 200.319\(c\)](#).
- Removing the requirement in [2 CFR 200.324\(b\)](#) to negotiate profit as a separate element of the contract when only one bid is received in response to a competitive solicitation.

## **Indirect Cost Rate**

- Raising the *de minimis* indirect cost rate from 10 percent to 15 percent.

## **Threshold increases**

- Equipment and unused supplies from \$5,000 to \$10,000.

**EFFECTIVE DATE:** October 1, 2024 (Unless recipients are informed otherwise, any awards made before the OMB changes take effect must comply with the current requirements.)

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

# Subaward vs. Procurement Contract



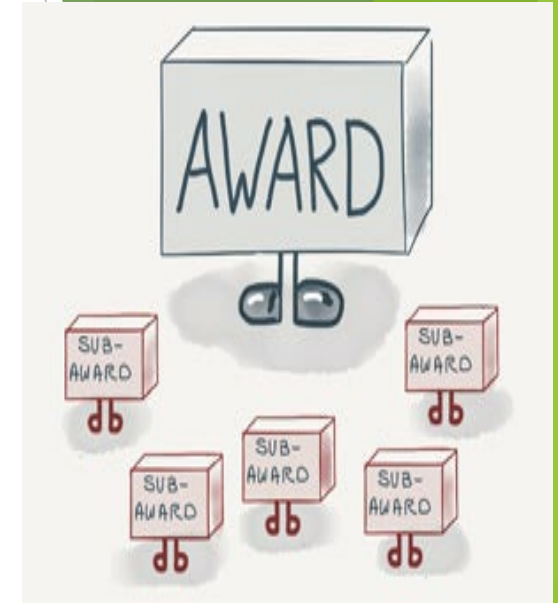


# Subawards vs. Contracts

## What's the Difference?

### Subawards

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



### Contracts

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

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

Just a friendly reminder...

# EPA's Subaward Policy

- The [EPA Subaward Policy](#) implements [UGG](#) regulatory requirements.
  - UGG codifies standards for distinguishing between subawards and contracts at [2 CFR 200.331](#).
- The National Term and Condition for Subawards can be found in Appendix B of the EPA Subaward Policy.
- **EPA grant recipients must include a number of provisions in subaward agreements and implement systems to monitor and guide subrecipient performance. (Appendix D of the Subaward Policy provides a model agreement.)**

# EPA Subaward Policy And Attachments

- ✓ The EPA Subaward Policy has several appendices, including:
  - Appendix A: Distinctions Between Subrecipients and Contractors
  - Appendix B: National Term and Condition for Subawards
  - Appendix C: Model Programmatic Subaward Reporting Requirement
  - Appendix D: Subaward Agreement Template
  
- ✓ Additionally, EPA posted an EPA Subaward Policy Frequently Asked Questions.



# Procurement Standards



# Why Do Procurement Regulations Matter?

- ✓ **Compliance:** Recipients must follow all applicable federal laws and regulations.
- ✓ **Transparency and Accountability:** Allows for oversight and auditing to ensure that grant funds are used for their intended purposes and that there is no fraud, waste, or abuse.
- ✓ **Full and Open Competition:** Promotes competition among potential vendors, resulting in better value for the government and the public.
- ✓ **Cost-Effectiveness:** Ensure recipients obtain goods and services at reasonable prices, thus maximizing the value of the grant funds.

## Procurement processes must comply with:

- ✓ 2 CFR Part 200
- ✓ 2 CFR Part 1500
- ✓ 40 CFR Part 33

### ▼ Procurement Standards

200.317 – 200.327

- § 200.317 Procurements by states.
- § 200.318 General procurement standards.
- § 200.319 Competition.
- § 200.320 Methods of procurement to be followed.
- § 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.
- § 200.322 Domestic preferences for procurements.
- § 200.323 Procurement of recovered materials.
- § 200.324 Contract cost and price.
- § 200.325 Federal awarding agency or pass-through entity review.
- § 200.326 Bonding requirements.
- § 200.327 Contract provisions.

# Failure To Follow the Rules Could Mean...

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

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



# Failure To Follow the Rules Could Mean...(cont'd)

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

EPA's first option for remedies in the Brownfields program comes from [CERCLA 104\(k\)\(8\)\(c\)](#) – *Violations*.

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

- Temporarily withhold cash payments pending correction of the deficiency.
- Disallow all or part of the cost of the activity or action not in compliance.
- Wholly or partly suspend or terminate the Federal award.
- Initiate suspension or debarment proceedings.
- Withhold further Federal awards for the project or program.
- Take other remedies that may be legally available.

## ▼ Remedies for Noncompliance

§ 200.339 Remedies for noncompliance.

§ 200.340 Termination.

§ 200.341 Notification of termination requirement.

§ 200.342 Opportunities to object, hearings, and appeals.

§ 200.343 Effects of suspension and termination.

# A few general procurement standards...

2 CFR 200.318 details general procurement standards that apply to non-Federal entities, including:

- a) The non-Federal entity must have and use **documented procurement procedures**, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in 2 CFR 200.317 through 200.327.
- b) Non-Federal entities must **maintain oversight** to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

.....

- e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, **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**. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

# Procurement Standards

## Non-State vs. State Entities

Recipients (including Tribal Nations), other than state entities, that procure services, supplies, and/or equipment under EPA assistance agreements must comply with the requirements at 2 CFR Part 200, 2 CFR Part 1500, and 40 CFR Part 33.

States follow the same procurement procedures as they do for non-Federal funds apart from the requirements in:

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

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

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



# EPA'S DBE Rule – Six Good Faith Efforts

## Local governments, States, Non-profits

### § 33.301 What does this subpart require?

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

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

## Tribal Nations

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

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

# Thre\$holds for Competition

1. Micro purchase level (generally up to \$10,000)
2. Up to the \$250,000 Simplified Acquisition Threshold (SAT)
3. More than \$250,000 SAT



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.

## Thre\$holds for Competition (cont'd)

**2. Recipients may use small purchase procedures for contracts up to the simplified acquisition threshold (\$250,000) by obtaining price or rate quotes from an adequate number of qualified sources. [[2 CFR 200.320\(a\)\(2\)](#)]**

- EPA expects recipients to obtain prices/quotes from at least 3 sources.
  - Can be by email
- Recipients must document their efforts:
  - For professional services, the email soliciting prices/quotes may be used for documentation.
  - For equipment, internet searches of price catalogues documented by “screen shots” are acceptable.

# Thre\$holds for Competition (cont'd)

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 and selection is based principally on price.
    - A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder.
    - Sealed bidding is generally not applicable to Brownfields Grants.
  - Competitive proposal procedures are typically used for professional services.
    - Generally, cost/price **MUST** be a selection factor in evaluating proposals.

Qualifications-based procurement, where price is not a selection factor, *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, state, or local law). It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

# Does the Type of Contract Matter?



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

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

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

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

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

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

# Consultant Fee Cap

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





# Sole Source Contracts

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

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

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

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

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



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

## Sole Source Contracts (cont'd)



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

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

# Conflicts of Interest

**Conflicts of interest are prohibited by 2 CFR 200.318(c).**

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

## **Organizational Conflicts of Interest**

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



## Considerations for Preparing Solicitation Documents/Selecting Contractors

## Practices That Are Restrictive of Competition

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

Practices that are restrictive of competition include:

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



# Can the Workplan Be Part of the Solicitation?

The following is a suggested workplan outline for your Multipurpose project.  
Blue italicized text should be reviewed and updated/inserted or omitted, as appropriate.

After entering new info, to update Table of Contents (TOC),  
right click on TOC and choose "Update field."

**EPA REGION 10  
FY2023 BROWNFIELDS MULTIPURPOSE COOPERATIVE AGREEMENT  
WORKPLAN**

**FOR**

*[Project Name]*

**Period of Performance (5 years):** *[e.g. October 1, 2023 – September 30, 2028]*

**Date(s) of Draft Workplan (date each revision):** *[e.g. June 1, 2023]*

**Date of Final Workplan:** *[e.g. July 1, 2023]*

**Submitted by**

*[Recipient Name]*

*[Recipient Address]*

*[Lead Contact Name]*

*[Address if different than above]*

*[Phone Number]*

*[Email]*

*[Website if available]*

**EPA Cooperative Agreement Number:** *[BF-XXXXXXX-0]*

It depends (but EPA does not encourage that it's included)...

- The workplan cannot be included if the recipient received assistance from a contractor in developing the workplan and that contractor plans to submit a bid.
- Recipients may (and should) include summary information from the workplan about the project in the RFP/RFQ, but cannot include the specific details from the workplan or the actual workplan.



## EPA's DBE Rule

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


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

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

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



# Price Reasonableness Must Be Considered

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

**Recipients must compare pricing for grant implementation services.**

\*Pricing for grant application writing services is an unallowable cost in the Brownfields Program.

**Options for evaluating price reasonableness include:**

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



# Price Reasonableness Must Be Considered, *Unless...*

The task **CAN ONLY** be performed by a licensed A/E firm (such as when **REQUIRED** by federal, state, or local law).

Then, and only then, can the recipient conduct a qualifications-based procurement, where price is not considered, but just for **that particular task(s)**.

Tasks such as: Professional design services required to develop technical specifications for certain types of construction (e.g., pump and treat).

A/E services do not apply assessment activities.

**May apply cleanup-related activities – It's up to the recipient to determine if it does.**

What about the other tasks? Why does price have to be considered when evaluating proposals?

The All Appropriate Inquiry Rule, 40 CFR 312.10, provides the definition of an Environmental Professional who is qualified to address contaminated sites and that definition is not limited to A/E firms.

All other assessment types of activities can be completed by different types of environmental professionals.

Note: The Brooks Act **does not** apply to Brownfields Grants.

# What if Typical Services and A/E Services Are Needed?

**Typical services** (which do not require the use of an A/E firm) = Phase Is, Phase IIs, planning, remediation, community engagement, ACRES reporting, etc.

**Options to evaluate A/E services when use of an A/E firm is required:**

- ✓ Evaluate A/E services separately using a qualifications-based process.
- ✓ Issue a separate contract for the A/E services using a qualifications-based process.
- ✓ Specify that the professional design services may be provided by a subcontractor that the prime contractor selects in compliance with state/local law.



## Evaluation Factors Must Be Weighted

There must be weighted evaluation factors.

- Evaluation factors document the rationale for selecting the contractor [[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** can be evaluated at the same time as the other factors for all bids (which is EPA's preference) **OR** only evaluated for two or more top-scoring bids (when multiple bids are received).

Evaluation criteria can:

- Use weighted percentages;
- Assign points to each selection factor; or
- Include a range of points with associated descriptors.

# Evaluation Factors Must Be Weighted (cont'd)

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

- X% – Demonstrated experience in [XXX type of activities (e.g., assessment, remediation)]
- 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

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



# Compete SMART!

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

- ✓ Cost/price analysis must be done in advance
- ✓ Profit must be negotiated as separate element for each contract in which there is no price competition  
**(does not apply to grants awarded on or after October 1, 2024)**

- Include “**options**” in the solicitation 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. Recipient may amend or extend this contract beyond the initial 4 years to accommodate the terms and conditions of the FY24 Grant or future EPA grants awarded to Recipient within this 4-year period provided a market survey conducted by Recipient indicates that the prices the contractor proposes are reasonable.”

# Other Considerations for Preparing Solicitation Docs

## ➤ Davis-Bacon:

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

## ➤ Build America, Buy America (BABA):

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

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

# Considerations for Selecting a Contractor

- ❑ **Document the decision.**
  - E.g., a scoring rubric
- ❑ **The lowest price does not have to be selected, but you must document the rationale and basis for the contract price. [[2 CFR 200.318\(h\) and \(i\)](#)]**
  - You may be required to provide this documentation to EPA's Grants Management Officer (GMO)/Award Official for review as required by 2 CFR 200.337(a).
  - Prior approval of the contract terms by the GMO may be required as provided for in 2 CFR 200.208(c)(6) if the GMO/Award Official is concerned about the recipient's compliance with competitive procurement rules.
- ❑ **Currently, if only one bid is received, and the contract is over \$250K, you must negotiate profit as a separate element of the contract. [[2 CFR 200.324\(b\)](#)]**
  - Applies to "Qualifications-based" procurement for A/E services where price is not a selection factor as required by [2 CFR 200.320\(b\)\(2\)\(iv\)](#).
- ❑ **Ensure the contractor is not suspended or debarred. [[General T&C #21](#)]**

# After The Procurement: Contract Provisions



After you have selected the contractor, determine what contract clauses need to be included in the contract, such as:

- Contract provisions in Appendix II to 2 CFR Part 200 (as applicable)
- BABA (as applicable)
- Davis-Bacon (as applicable)
- Appendix A to 40 CFR Part 33
- Recipient and Subrecipient cross-cutter requirements (some of these provisions may be pertinent to your contract)

# Solicitation Preparation Resources

## Locate example solicitation documents by:

- Searching online
- Asking an existing Brownfields Grant recipient for a copy of their documents
- Review [OBLR Guidance on Competitively Procuring a Contractor](#)
- Contacting your EPA Project Officer
- Contacting a [Technical Assistance to Brownfields \(TAB\) Communities](#) provider

## Additionally, look at ....

- [EPA's Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#)
- [2 CFR Part 200](#) (the UGG)
- [2 CFR Part 1500](#) (EPA's supplement to the UGG)
- [40 CFR Part 33](#) (EPA's DBE regs)

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





QUESTIONS?!?!