



Procurement, Subawards, and Participant Support Costs

Office of General Counsel
Office of Grants and Debarment

March 27, 2024

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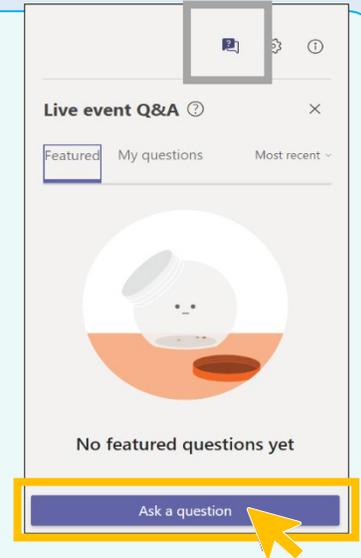
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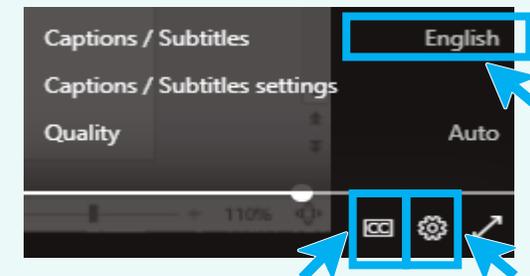


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Meet the Presenters



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Today's Agenda

- BREAKING NEWS!!
- Subawards v. Procurement Contracts
- Competitive Procurement Standards
- Considerations for Preparing Solicitation Documents/Selecting Contractors
- Participant Support Costs
- Financial Management/Timely Disbursement of Funds
- Watching for Waste, Fraud, Abuse, and Mismanagement



**BREAKING
NEWS**

Proposed OMB Updates

On October 5, 2023, [OMB proposed to amend the Uniform Grants Guidance \(UGG\)](#) to make several significant changes to 2 CFR Part 200, including:

- 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.
- New provisions on:
 - Project Labor Agreements and various hiring goals and preferences.
 - Scoring mechanism to reward bidders committing to specific numbers and types of U.S. jobs, minimum compensation, employee benefits, etc.
- Threshold increases:
 - Equipment and unused supplies from \$5,000 to \$10,000.
 - Fixed Amount Subawards: eliminating \$250,000 threshold.

NOTE: Any awards made before the OMB changes take effect must comply with the current requirements.

**Subaward v.
Procurement
Contract**



Subawards vs. Procurement Contracts

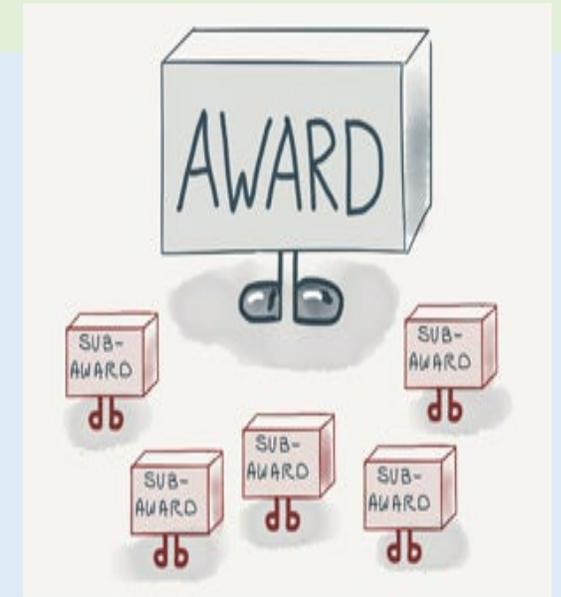
What's the Difference?

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.
- **PROFIT IS NOT ALLOWABLE!**

Contracts

- As provided in [2 CFR 200.331](#), contractors (including individual consultants) typically:
 - Provide goods and services on commercial terms;
 - Provide similar goods and services to many different purchasers;
 - 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 new Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards ([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 grantees 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).**

Subaward Policy 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](#).



Substance of a Subaward

- A subaward may be provided **by any form of legal agreement**, even if the recipient considers it a contract; the ***substance*** of the agreement is more important than the form.
 - See the definition of *Subaward* at [2 CFR 200.1](#) and EPA's Subaward Policy for more information.
- For example, if EPA receives an assistance agreement application and the applicant has identified funding for a “contract,” EPA will work with the applicant to determine whether the relationship was appropriately categorized as a procurement contract or subaward.



Subawards and Partnership Agreements



Q: Does EPA consider all “partnership agreements” that establish funding relationships to be subawards that are not subject to competition?

A: NOPE.

- Transactions are either subawards, procurement contracts, intergovernmental/inter-entity agreements for common procurement, interagency service agreements or services, or participant support costs.
- Characterizing the transactions consistently with the terms used in the UGG is important for determining what rules govern the agreement.

Some recipients refer to their contractors (particularly consultants) as “partners” so the label the recipient places on the transaction is not determinative.

Subrecipient Oversight

- Pass-through entities are accountable for overseeing subrecipient performance in accordance with [2 CFR 200.332](#).
- EPA requires pass-through entities to ensure that subrecipients only incur eligible and allowable costs and effectively perform the programmatic activities under their subawards.
- Although under [2 CFR 200.305\(b\)\(1\)](#) pass-through entities pay subrecipients in advance, if the pass-through entity's monitoring of a subrecipient's activities indicate that reimbursement is the appropriate payment mechanism to ensure compliance with federal requirements, EPA will support the pass-through entity's determination.



What Happens if a Recipient/Subrecipient Does Not Follow the Rules?

If a recipient or subrecipient fails to comply with the regulations or terms/conditions of the EPA grant, EPA or the pass-through entity can impose specific conditions (i.e., more requirements) [[2 CFR 200.208](#) or [2 CFR 200.332](#)]:

- (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.



What Happens if a Recipient/Subrecipient Does Not Follow the Rules? (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. Pass-through entities can take similar actions as provided in 2 CFR 200.332(h).

EPA's first option for remedies comes from the grant statute if it speaks to this issue (e.g., [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.

Procurement Standards



Why Do Procurement Standards 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.

*Note, in addition to the above regulations, which apply to all EPA grants, some grants have additional statutory requirements related to procurement, such as following the [Brooks Act](#) qualifications-based procurement procedures.

Procurement Standards Under the UGG

State v. Non-State Entities

- Recipients (including Tribal Nations), other than state entities, that procure services, supplies, and/or equipment where the amount of the contract will be more than the micro-purchase threshold in [2 CFR 200.320\(a\)\(1\)](#) (\$10,000 for most applicants) must select contractors (including consultants) in compliance with the fair and open competition requirements in 2 CFR Part 200 and 2 CFR Part 1500.
 - States follow the same procurement procedures as they do for non-Federal funds apart from the requirements in [200.321](#) (small and disadvantaged businesses), [200.322](#) (domestic preferences), [200.323](#) (recycled materials), and [200.327](#) (contract clauses contained in [Appendix II](#)).
 - EPA's [40 CFR Part 33 Disadvantaged Business Participation](#) rule also applies to states.
 - Note, there are separate rules for Tribal Nations as it pertains to the six good faith efforts to solicit DBEs requirement.
- Please refer to EPA's [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#) for additional guidance.

EPA's DBE Rule and 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.

[40 CFR 33.304](#)

Competition Thresholds Under the UGG

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.



Competition Thresholds Under the UGG (cont'd)

2. Recipients may use small purchase procedures for contracts up to the simplified acquisition threshold (**\$250,000**) by obtaining price or rate quotations from an adequate number of qualified sources. [2 CFR 200.320\(a\)\(2\)](#).
 - EPA expects recipients to obtain prices/quotes from at least 3 sources.
 - 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.

Competition Thresholds Under the UGG (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\(b\)\(2\)](#).
- 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.
 - 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, must be used if the grant statute specifically requires qualifications-based procurement (e.g., 33 U.S.C. 1382(b)(14)). Additionally, it *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.

Grant Statute v. UGG, Which Applies?

- In the event of a conflict between the grant statute and UGG, the grant statute controls over the procurement standards to be followed.
- For instance, the grant statute may expressly encourage the use of geographic preferences in evaluating bids or proposals and/or require a specific method of procurement to be followed (e.g., the Brooks Act qualifications-based procurement standards, where price is not a selection factor), whereas the UGG currently prohibits the use of geographic preference and generally requires cost reasonableness to be considered in evaluating proposals.

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, which is consistent with 40 CFR 33.304.

EPA does not interpret the ISDEAA or 40 CFR Part 33 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.

Procurement & 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



What Are Examples of Practices That Restrict 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 Grants
- ⊗ Making noncompetitive awards to consultants that are on retainer contracts
- ⊗ Discouraging other contractors from submitting an offer by naming firms



Applies to all competition thresholds

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.”



Applies to all competition thresholds

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

- Include **“options”** in the RFP/RFQ that will allow the same contractor to conduct work under current and future grants.
- Must request updated cost information from the contractor to determine if there is a change in rates and to ensure the new price for services is reasonable as required by [2 CFR 200.324\(a\)](#) & [404](#).
- Verify any price increase is reasonable by using information available online (or other sources) to conduct a market survey.

For example...

“The resulting contract will be for 4 years. [Organization name] may amend or extend this contract beyond the initial 4 years to accommodate the terms and conditions of the FYXX Grant or future EPA grants awarded to [Organization name] within this 4-year period provided a market survey conducted by [Organization name] indicates that the prices the contractor proposes are reasonable.”

Must I Consider Price Reasonableness in Evaluating Proposals?

- Generally, yes, unless the task **CAN ONLY** be performed by a licensed Architectural and Engineering (A/E) firm (such as when **REQUIRED** by federal, state, or local law) or when the grant statute specifically requires qualifications-based procurement without price as a consideration factor (e.g., the Clean Water Act requires procurements for certain A/E-type services comply with the Brooks Act or an equivalent State qualifications-based requirement, where price is not a selection factor).
 - For instance, price reasonableness must be considered when procuring *construction* services.
- Then, and only then, can the recipient conduct a qualifications-based procurement, where price is not considered, but just for **that particular task(s)**.
- Otherwise, price reasonableness **must** be considered, which will be discussed in more detail on the following slides.

Price Reasonableness Must Be Considered

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

Generally, recipients must compare pricing for grant implementation services.

*Several EPA grant programs, however, allow recipients to directly charge reasonable proposal preparation costs for these agreements to the EPA grant.

Options for evaluating price reasonableness:

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



Soliciting for Multiple Types of Services Under the UGG (e.g., A/E and construction services)

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

You must have weighted evaluation factors

- Document rationale for selecting the contractor (required by [2 CFR 200.318\(i\)](#))
- EPA recommends that, when applicable, 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, infrastructure)]
- 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) [**when applicable**]
- X% - References



90 - 100	Most Effective	5
80 - 89	Above Average	4
70 - 79	Average	3

Or, for example

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

Other Considerations for Preparing Solicitation Documents

- **Grant statute specific procurement requirements**
- **Davis-Bacon:**
 - Davis-Bacon labor standards only apply to a federal financial assistance program if the statute (i.e., typically the statute authorizing the grant program) mandates compliance with Davis-Bacon prevailing wage requirements
 - If Davis Bacon applies to your grant **and** 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:**
 - 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.
- **American Iron and Steel:**
 - Applies to certain OW financial assistance programs (e.g., SRFs, Community Grants, WIFIA, OSG)

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

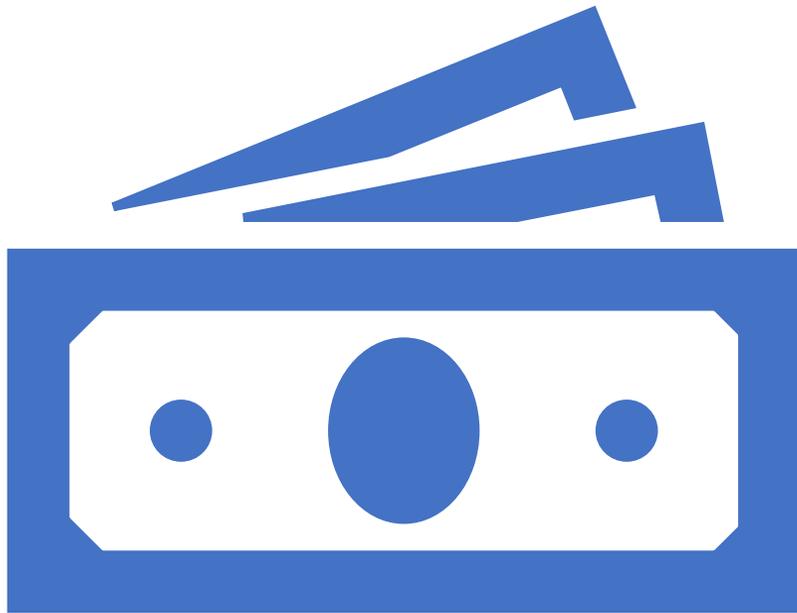
Considerations for Selecting a Contractor

- ❑ **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) for review as required by 2 CFR 200.337(a).
 - Prior approval of the contract terms by the GMO may be required as provided for in 2 CFR 200.208(c)(6) if the GMO is concerned about 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 Architectural and Engineering 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](#)]



Participant Support Costs

Participant Support Costs

- **Participant support costs are defined at 2 CFR 200.1 and are allowable with prior EPA approval (pre or post award) as provided at [2 CFR 200.456](#). Common examples include travel assistance and stipends for trainees and incentives to participate in research programs.**
- EPA expanded the definition of participant support costs in 2 CFR 1500.1 to include rebates and subsidies for the purchase of pollution control equipment for Diesel Emission Reduction Act (DERA) grants as well as subsidies to promote participation in environmental stewardship programs under CWA 319 and other statutes.
- **Detailed information is available at [EPA Guidance on Participant Support Costs](#).**

Other Requirements for Participant Support Costs

- Participant support costs are subject to the “Basic Considerations” for the allowability of costs described in [2 CFR Part 200, Subpart E](#).
- The costs must be reasonable, incurred within the project period, and otherwise allocable to the EPA assistance agreement and adequately supported by accounting records.
- For example, recipients should develop a documented allocation methodology for program participant travel that accomplishes multiple purposes that include activities outside of the scope of work for the EPA assistance agreement.
- Recipients should obtain receipts for training or community meeting attendance stipends particularly if the payments are made in cash.

Special Rules for Rebates and Subsidies

- Participant support costs for rebates/subsidies must be supported by EPA program guidance memoranda or by guidelines issued by the recipient and approved by EPA. [*EPA's DERA program provides this guidance.]
- These documents should define the rules, restrictions, timelines, programmatic requirements, reporting and transaction documentation requirements, eligibility, and funding levels that rebate, subsidy or other payments beneficiaries must follow.
- Other forms of program records that are transaction specific (e.g., memoranda of understanding) may be acceptable.
- The terms of the EPA assistance agreement must describe allowable rebates, subsidies or other payments.
- There must be a written agreement between recipient or subrecipient and the program beneficiary that outlines the program requirements.

Budgeting for Participant Support Costs

Under [2 CFR 200.308\(c\)\(5\)](#), “Revision of budget and program plans,” recipients must obtain approval from an Authorized EPA Official to transfer funds budgeted for participant support costs to other categories of expense.

- This requirement makes it particularly important for POs and Grant GS to ensure that the recipient’s budget narrative specifies the amount of PSC in a separate line item in the “Other” category.
- Travel for program participants should not be budgeted in the “Travel” category—per [2 CFR 200.474](#) allowable travel costs are only for recipient employees.
- A recipient’s failure to obtain prior EPA approval to transferring funds from PSC to other direct cost categories may be subject to cost disallowance or other enforcement action.



Financial Management

Financial Management Common Sense Tips

- Records must tell a complete story – tracing costs from planning through drawdown and payment, showing need, approvals, proper accounting, and receipt of goods and services.
- You can only have one set of books. Your financial management system must be used for all accounts.
- Payroll records, including timesheets, must account for 100% of the time of every employee. This includes non-working hours (leave, etc.) and all activities charged by each employee.
- Employees charged to more than one cost center must charge actual hours spent on each; they cannot be paid based on a pre-determined allocation. Non-working hours must be properly prorated among all cost centers, or charged to the general ledger.
- Charges have to make sense. For example, you cannot charge an employee's travel to a different account than his/her payroll for the same day. The appropriate account should be charged for both.



Timely Disbursement of EPA Funds



Recipients, other than states, must minimize time elapsing between draw down and disbursement as required by [2 CFR 200.305\(b\)](#).

- State draw downs are covered by agreements with U.S. Treasury.
- Drawdowns should be based on actual costs incurred (e.g., payroll, payment of contractor invoices) rather than estimates or “even” amounts each month or week based on anticipated cash flow.
- ASAP system allows almost instantaneous payment. No need to wait for check in mail.

Timely Disbursement of EPA Funds (cont'd)

- [EPA policy](#), as reflected in General T&Cs, requires recipients to enroll in ASAP.
- EPA will measure compliance with [2 CFR 200.305\(b\)](#) based on disbursement of at least 95% of drawn down funds within 5 business days. Clear audit standard.
- **5 business day disbursement standard does not apply to states.**

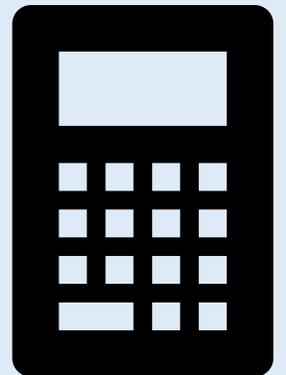


How to Survive an Improper Payment Review

- **EPA conducts reviews of a sample of recipient drawdowns to monitor compliance with regulatory requirements.**
- **Recipients must provide accounting documentation to support the amount of funds drawn down and timely disbursement.**

Examples of documentation include:

- ✓ Payroll records showing compensation charged to EPA assistance agreement based on contemporaneous estimates of actual hours performing work under the assistance agreement. Charges based on percentage of time in budgets must be adjusted to reflect after the fact determinations of hours worked.
- ✓ Invoices from contractors or payment requests from subrecipients.
- ✓ Travel vouchers, receipts from hotels, etc. to support travel reimbursement.
- ✓ Procurement records documenting compliance with competition requirements.



Fraud,
Waste,
Abuse, and
Mismanagement

FRAUD



What is Fraud, Waste, Abuse, & Mismanagement?

Fraud: An intentional deception designed to unlawfully deprive the government of something of value for an individual benefit, privilege, allowance, or consideration to which they are not entitled

Waste: Extravagant, careless or needless expenditure of government funds that results from deficient practices, systems, controls, of decisions

Abuse: An intentional and unacceptable use of grant funds or misuse of one's position

Mismanagement: Failure to appropriately manage budgets, expenditures, or documentation for grant funds



Watching for Waste, Fraud, Abuse, etc.

As an EPA recipient, you are responsible for carrying out your EPA grant as described in the award document and T&Cs. Oversight of your subrecipients is crucial.



Please watch for suspicious activities, such as:

- Subawards were not awarded properly, or they were awarded to excluded entities (this information is available in SAM.gov); and/or
- Subawardees are not using the grant funds on agreed-upon activities under the subaward; and/or
- Subrecipients are not providing financial or reports as required, and/or the funds requested do not match the amount of work completed.

Reporting Fraud, Waste, Abuse, and Mismanagement

DO:

- [Contact the Office of Inspector General \(OIG\) Hotline](#)
- Discuss your concerns with the OIG
- Seek answers to your questions in the normal course of business
- Cooperate with the OIG and expect to be contacted and involved

DON'T:

- “Tip off” subjects of actual or pending investigation
- Feel compelled to “prove” a case or intent
- “Stop” your normal course of business unless otherwise directed

EPA OIG Hotline Complaint Form

Anyone with knowledge of fraud, waste, abuse, misconduct, or mismanagement involving the U.S., Environmental Protection Agency should contact the Office of Inspector General's hotline.

Further details are provided on the [EPA OIG Hotline Information](#) webpage about:

- reporting to the Hotline
- understanding fraud, waste and abuse
- information about whistleblowing
- information about mandatory disclosures

The easiest way to submit a hotline complaint is to fill out and submit the following form.

General

I am providing my name and I agree that EPA OIG can disclose my name and other information I provide, if necessary, to ensure my issues are addressed.

Confidential

I wish to be confidential, meaning I am providing the OIG my name, but I request that the OIG not disclose my name outside the OIG. This option is appropriate for complainants who fear reprisal.

Anonymous

I wish to be anonymous, meaning the OIG will not know my name. If

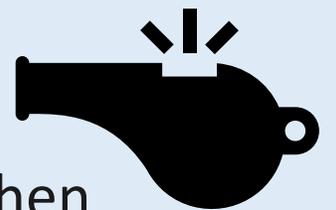
Whistleblower Protections

The [EPA OIG's Whistleblower Protection page](#) provides helpful information on protections for those who report suspected waste, fraud, abuse, and/or mismanagement.

- Complainants who are not EPA employees do not have an automatic right to confidentiality under section 7(b) of the [Inspector General Act of 1978](#). However, non-EPA employees may specifically request confidentiality, and the OIG will protect the confidentiality of such complainants to the maximum extent permitted by law (for example, by using applicable exemptions and exclusions of the Freedom of Information Act and applicable exemptions of the Privacy Act).

Anonymity

- If you do not wish to disclose your identity, you may remain anonymous when contacting the OIG. However, please keep in mind that anonymity may impede a quick or thorough investigation or the success of a later prosecution.



Conclusion/Resources

- Proper characterization, budgeting, and oversight of recipient practices for subawards, procurements, and participant support costs is not easy.
- EPA has numerous resources available to assist grantees, including:
 - [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#)
 - [EPA Subaward Policy](#) and appendices:
 - 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](#)
 - [EPA Subaward Policy Frequently Asked Questions](#)
 - [EPA Guidance on Participant Support Costs](#)
- In addition, EPA Grant Policies are available at <https://www.epa.gov/grants/epa-grants-policy-resources>.
- Code of Federal Regulations (CFR) – [2 CFR Part 200](#) and [2 CFR Part 1500](#)

Questions?

- Seek advice initially from your Project Officers and/or Grant Specialists.
 - OGC and OGD's National Policy Training and Compliance Division are available to provide assistance on difficult issues or areas that require national consistency.
- In addition, answers to questions asked during this webinar will be provided in the next few weeks and will be available on the [Procurement, Subawards, and Participant Support Costs – March 27, 2024](#), page.

