

# Procurement 2.0

• • • **YEP, we're back**



*This is a recorded webinar*

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**What's New, What's Changed, What You Need to Know**

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# Gotta say it...

- This webinar is designed to provide information/guidance on EPA's procurement policies and practices
- It relies on EPA's published procurement guides, resources and webinars
- For project specific questions, PLEASE contact your Regional EPA Brownfields Project Officer
- Information is current as of today – subject to change (incl. Exec. Orders)



# Procurement 2.0 - Poll

It's tough to jump in but...

Start with [Two-part Proactive Procurement Series](#)



# Why Procurement 2.0?

- Recap - Why Procurement Matters
- Issue - Rules Change
- Overview of key updates “2024 Revisions to 2 CFR 200”
- Since Jan 2024 (EPA Updates (9/25))

## UPDATED EPA PROCUREMENT GUIDANCE DOCUMENTS

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

[EPA's Brownfields Grants: Guidance on Competitively Procuring a Contractor](#)

# Effective Dates

- Awarded on or after October 1, 2024
- Existing CA's with funding **added** on or after October 1, 2024
- [RAIN-2025-G01](#) – recipients requesting to apply the “2024 2 CFR Revisions”
  - *...recipients with fully funded assistance agreements made prior to October 1, 2024, that have a project period end date later than September 30, 2025, the option to request a no-cost amendment to allow them to apply the 2024 Revisions to the assistance agreement.*
  - *If a current EPA recipient is expecting supplemental or incremental funding in Fiscal Year 2025 (FY25), the 2024 Revisions will be incorporated by amendment when the new funding is added to the grant or cooperative agreement.*
  - *The 2024 Revisions cannot apply retroactively to already expended or spent EPA funds.”*
- Threshold increases **ONLY** apply to grants awarded on or after October 1, 2025.

# Major Update #1 - Thresholds have **MOVED**

Effective Date: Grants awarded on or after 10/1/2025.

- Micro-Purchase: \$10,000 → **\$15,000**
- Simplified Acquisition Threshold: \$250,000 → **\$350,000**
- Equipment/Supply definition: \$5,000 → **\$10,000**
- Micro-purchase in lieu of subaward: \$25,000 → **\$50,000**

***Practice Tip: Update your internal policies NOW to reflect these numbers***

# Major Update #2 – Tribal Nations

- Tribal Nations have same status as States – 2 CFR 200.317
- Can rely on their own procurement P&Ps IF any exist
- They are subject to the procurement standards in effect at the time of award

# Major Update #3 – Geographic Preferences

- Old Rule: No geographic preferences (even if state/local law allowed)
- New Rule: Prohibition Removed - 2 CFR 200.319 (c)

Caution: Still must comply with other federal requirements (competition, DBE, etc.)

***Practice Tip: If you add geographic preference, document how it is applied consistently.***

# Major Update #4 – Disadvantaged Business Enterprises (DBE) Requirements

- Effective April 7, 2025: EPA suspended multiple provisions of 40 CFR Part 33
- What was suspended? [RAIN-2025-G02](#)
- What is still required: Non-discrimination clauses remain

Caution: Check for updates before **every** procurement

***Practice Tip: Do not scrap your DBE outreach – document your good faith efforts (six of them) based on current guidance.***

# Major Update #5 – Subrecipients Explicitly Covered

- The 2025 updates now consistently includes, “recipients and subrecipients”
- Procurement standards flow down
- Pass-through entity responsibilities: Monitoring just got more explicit

***Practice Tip: Review your subaward agreements and monitoring plans.***

# Reminders & Considerations



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Solicitations and Vendor Selection



# Restricting Competition (Just Don't)

- Using sample language/templates from firms planning to bid on services
- Accepting **ANY** assistance from a contractor if it plans to compete
- Discouraging other bidders by naming firms
- Issuing noncompetitive awards to firms on retainer contracts
- Any unreasonable competition requirements
  - Unique specifications that only one firm could meet
  - **Requiring experience with EPA grants - NO!!!**

# EPA DBE Rule

## [40 CFR Part 33](#) (EPA Regs; DBE)

- Must make good faith efforts to contract with DBE's whenever procuring construction, equipment, services and supplies
- DBEs have the opportunity to compete for procurement
- Documentation of methods used in records
- Appendix A to 40 CFR 33 – requires procurement contracts to include the following:

*“The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.”*

# Good Faith Efforts

## Good Faith Efforts §33.301 (requirement)

- *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.

Note: Separate rules for good faith efforts for Tribal Nations - 33.304; allowed to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process



# EPA's DBE Rule

- Making good faith efforts from DBEs
- Recommendation: checking with Small Business Administration, Department of Transportation or state agencies
- Recommendation: publicly advertising RFPs/RFQs & open for **at least 30 days** for full and open competition
- Document efforts!!!

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# Cost/Price Reasonableness

- Must be considered for RFPs/RFQs
- Evaluation **must** be weighted
- Recommendation: cost/price proposal is  $\geq 25\%$  of total %
- Recommendation: Evaluate at the same time as other factors for all bids
- **OR** evaluate only for 2+ top-scoring bids (must receive multiple bids)



# Procurement Checklist

## Before you Procure:

- Confirm current thresholds (they can change!)
- Check DBE status (RAIN 2-2025-G02)
- Review geographic preference policy
- Identify if subrecipients are involved



# Procurement Checklist

## During Procurement:

- Document!!!
- Use independent cost estimates
- Follow competition requirements based on threshold



# Procurement Checklist

## After Award:

- Monitor contracts
- Ensure that activities are covered in workplan!
- Keep files audit-ready



# Failure to Follow the Rules

EPA can impose specific conditions (2 CFR 200.208)

*(c) Specific conditions may include the following:*

- (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;*
- (3) Requiring additional or more detailed financial reports;*
- (4) Requiring additional project monitoring;*
- (5) Requiring the recipient or subrecipient to obtain technical or management assistance; or*
- (6) Establishing additional prior approvals. (e.g., corrective action plan)*

# Additional Non-Compliance Remedies

2 CFR 200.339 – 200.343

- *Temporarily withhold payments until recipient takes corrective action*
- *Disallow costs associated with the noncompliance*
- *Suspend or terminate the award in part or its entirety*
- *Initiate suspension or debarment – 2 CFR Part 180 (or for pass-through entities)*
- *Withhold further federal awards for project or program (new or continuation)*
- *Pursue other legally available remedies*

# Takeaways

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- READ EPA Procurement Guidance Documents
- Know Your “Why”
- Know What You Need and Want Out Of Your RFP/RFQ
- Be AWARE – [2 CFR 200 Updates](#)



**Don't Wing It!!**

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