



Federal Procurement and Davis-Bacon and Related Acts

Why do Procurement Standards Matter?

- Compliance – Recipients must follow all applicable federal laws and regulations
 - Make good faith efforts to contract with DBEs when procuring construction, equipment, services and supplies
 - In general, procurement processes must comply with Uniform Grants Guidance (UGG):
 - [2 CFR Part 200](#)
 - [2 CFR Part 1500](#)
 - [40 CFR Part 33](#)
 - Grant statutes preside if there is conflict with UGG (i.e. geographic preferences in evaluating bids or proposals or qualifications-based procurement methods)
- Transparency and Accountability – Allows for oversight and auditing to ensure grant funds are used as intended
- Full and Open Competition – Promotes competition between vendors and better value
- Cost-Effectiveness – Ensures recipients obtain goods and services at reasonable prices, maximizing grant funds

Federal Procurement Thresholds



MICRO PURCHASE: Up to \$50,000 with self certification without competition (i.e. supplies) and purchases distributed equitably to extent practicable



SIMPLIFIED ACQUISITION: Up to \$250,000 – obtain prices/quotes from at least three sources for professional services (email) or equipment (internet searches)











FORMAL COMPETITIVE REQUIREMENTS: More than \$250,000 – subject to formal competitive requirements and must obtain competitive sealed bids (price) or proposals (qualifications + cost)



These apply to subrecipients, contractors, grantees, and other recipients of financial assistance from EPA

Micro Purchase

	Up to \$50,000
	Made without competition
	Typically for minor purchases such as supplies
	Purchases must be equitably distributed among qualified sources to extent practicable
	Meet DBE requirements
	Sufficient market competition to ensure prices are reasonable
	May be up to \$50,000 if meet requirements of <u>2 CFR 200.320(a)(iv)</u> , or higher than \$50,000 with approval of cognizant Federal agency <u>2 CFR 200.320(a)(v)</u>
	Cannot be used to make a series of purchases in a short time frame from same source (particularly for professional services)

Simplified Acquisition



Up to \$250,000



Obtain documented prices/quotes from at least three qualified sources



Use small purchase procedures under 2 CFR 200.1



Solicit offers from adequate number of sources



Meet DBE requirements



Without formally advertising or publicizing contracting opportunity



Do not need to select lowest priced item or service if it does not meet requirements or can demonstrate that goods or services at higher price offer best value



Need to justify decision to purchase at higher price and ensure vendor charges similar customers the same price, document decision in procurement file

Formal Competitive Requirements - Sealed Bids



Above \$250,000



Two types of formal procurements: sealed bids and competitive proposals



Subject to formal competitive requirements under 2 CFR 200.319 and 2 CFR 200.320(b)(2)



Sealed bidding when there are precise specifications and firm fixed price contract awarded based principally on price - typically for construction projects, purchases of widely available equipment, or bulk supplies



Sealed bid requirements: recipients must solicit bids from adequate number of potential contractors, meet DBE requirements, may use website announcements or bidder lists that comply with 2 CFR 200.319(e); tribal and local government recipients can use their written procurement policies and procedures



Must remain open at least 30 days under 40 CFR 33.301(b); notify U.S. SBA and MBDA



Detailed requirements for sealed bidding under 2 CFR 200.320(b)(1)



If contract not awarded to lowest bidder, EPA determines if approval required under 2 CFR 200.325(b)(4)

Formal Competitive Requirements – Competitive Proposals



Above \$250,000



Subject to formal competitive requirements under 2 CFR 200.319 and 2 CFR 200.320(b)(2)



Appropriate when conditions for sealed bidding not met and recipient will award firm fixed price or cost reimbursement contract



RFPs must be publicized and identify selection criteria



Publication can include website announcements, prequalified lists that comply with 2 CFR 200.319(e)



Must remain open at least 30 days under 40 CFR 33.301(b)



Detailed requirements for competitive proposals under 2 CFR 200.320(b)(2); notify U.S. SBA and MBDA; meet DBE requirements



Must have written method for conducting technical evaluations



Qualifications based competitive selection can be used for A/E firms under of 2 CFR 200.320(a)(iv)



Not Allowed



Examples:

- Conflicts of Interest prohibited by 2 CFR 200.318(c)
 - Personal conflicts of interest – cannot be involved in selection, award or administration of contract if there is real or apparent conflict of interest
 - Organizational conflicts of interest – parent, affiliate or subsidiary organization must have written standards of conduct on organizational conflicts of interest
- Practices that restrict competition under 2 CFR.319(b):
 - Using sample language or templates from contractors planning to bid on services
 - Accepting assistance from contractors that plan to bid on services
 - Imposing unreasonable competition requirements (overly narrow specifications that only one firm can meet, requiring firms to have experience with EPA grants)
 - Making noncompetitive awards to consultants on retainer contracts
 - Discouraging contractors from submitting offers by naming firms
 - Competitive procurements now allow geographic preferences under 2 CFR 200.319



Evaluation Criteria and Selection



- Evaluation criteria must be weighted (i.e. weighted percentages, points, range of points)
- Document rationale for contractor selection under 2 CFR 200.318(i)
- EPA recommends that reasonableness of cost is at least 25%
- Evaluation criteria can include
 - Demonstrated experience
 - Success in completing tasks/projects
 - Experience and capacity of project team
 - Reasonableness of cost
- Document selection decisions – scoring rubric
- Document rationale and basis for contract price under 2 CFR 200.318(h) and 2 CFR 200.318(i)
- If only one bid received and contract > \$250k, must negotiate profit as separate element of contract
- Ensure contractor is not suspended or debarred

Davis Bacon and Related Acts (DBRA)

Unique Requirements for Construction Contracts



Construction defined as “erection, alteration or repair of buildings, structures, or other improvements to real property, activities in response to a release or a threat of a release of a hazardous substance into the environment, or activities to prevent the introduction of a hazardous substance into a water supply”



EPA programs that fund construction contracts over \$2,000 are subject to prevailing wage requirements related to DBRA



If procuring for services that trigger DBRA compliance, prevailing wage determination must be included in solicitation



Include **in solicitations and contracts** DBRA required contract clauses on minimum wages, withholding, records and certified payrolls, apprentices and equal employment opportunity, subcontracts, certification or eligibility, and anti-retaliation



Include DBRA required contract clauses for contracts in excess of \$100,000



EPA terms and conditions for DBRA will be added to grant agreement – intended to protect laborers and mechanics on projects funded in part or in whole by Federal funds



Requires payment of prevailing wages and weekly payment of wages

DAVIS BACON AND RELATED ACTS:

Subrecipient Responsibilities

PRIOR to CONTRACT AWARD:

- Include correct wage determinations in bid solicitations and contracts
- Include the following text: “By accepting this contract, the contractor acknowledges and agrees to the terms provided in the [DBRA Requirements for Contractors and Subcontractors Under EPA Grants](#)”

AFTER CONTRACT AWARD:

- Approve and submit requests for additional wage rates under [29 CFR 5.5](#)
- Provide oversight of contracts to ensure compliance with DBRA under [29 CFR 5.6](#)
- Grantees must report federal awards into Sub-award Reporting System ([FSRS](#)) transitioning to SAM.gov in March 2025

MANAGING CONTRACTS:

- Ensure [DBRA requirements](#) included in all subawards
- Provide oversight to ensure compliance with DBRA under [29 CFR 5.6](#) – spot checks of payrolls, onsite interviews, report violations to DOL, maintain full documentation for 3 years

These contract clauses and [correct wage determinations](#) must be part of solicitations and contracts covered by DBRA

Davis-Bacon and Related Acts



Collection of labor standards provisions administered by Department of Labor for grants involving construction



Davis-Bacon Act

Requires payment of prevailing wages for laborers and mechanics for construction contracts \$2,000 or more



Copeland “Anti-Kickback” Act

Prohibits contractor or subcontractor from inducing employee to give up part of their compensation



Contract Work Hours and Safety Standards Act

Requires overtime wages to be paid for hours worked in excess of 40 hours per week for contracts greater than \$100,000

Resources

- [Information on Requirements that Pass-Through Entities must “Flow Down” to Subrecipients \[Revision Date: March 2023\]Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements | US EPA](#)
- [Procurement, Subawards, and Participant Support Costs Webinar - March 27, 2024 | US EPA](#)
- [Community Change Grants FAQ updated May 2024](#) (pp. 17-20)
- [Davis-Bacon and Related Acts \(DBRA\) | US EPA](#)
- [Contract Provisions for Davis-Bacon and Related Acts | US EPA](#)
- [New EPA Davis-Bacon Grant Term and Condition Webinar Frequently Asked Questions](#)