FEDERAL PROCUREMENT
BEST PRACTICES

February 26, 2025











#### WHAT IS PROCUREMENT?

The process of buying or otherwise obtaining goods or services, typically for business or government purposes and usually on a relatively large scale through purchasing, contracting or competitive bidding

#### Federal procurement standards ensure:

- Cost-effectiveness
- Transparency and accountability
- \* Fair and open competition
- Good faith efforts to support sustainability and social responsibility

### FEDERAL PROCUREMENT METHODS AND THRESHOLDS

- MICRO-PURCHASE: Up to \$50,000 can be made without competitive bidding and if purchases are distributed equitably among suppliers
- SIMPLIFIED ACQUISITION: Up to \$250,000 obtain informal quotes from at least three suppliers
- FORMAL COMPETITIVE REQUIREMENTS: Above \$250,000 follow formal competitive requirements through either
  - Sealed bids (cost)
  - Competitive proposals (qualifications + cost)



#### Micro-Purchase

- ♦ Most Up to \$50,000 without EPA approval
- Without competition if purchases are equitably distributed
- Suitable when market competition ensures fair pricing (e.g., supplies)
- Disadvantaged Business Enterprise (DBE) considerations should be made
- Thresholds higher than \$50,000 require Federal/EPA approval





Simplified Acquisition

- **Purchases up to \$250,000**
- Obtain documented prices/quotes from at least three qualified sources without formally advertising
- ❖ DBE considerations should be made
- \* Can select higher-priced item or service if:
  - O Higher price offers best value
  - Justification is documented



Formal Competition Requirements

- **•** Over \$250,000
- Solicit from adequate number of potential contractors
- May use website announcements or bidder lists
- Tribal and local governments can use their written procurement policies
- Must remain open at least 30 days
- **❖** Meet DBE requirements

Formal Competition 1: Sealed Bids

- When precise specifications are available, and firm fixed-price contract will be awarded
- Examples: construction, equipment, or bulk supplies
- Subject to formal <u>competitive requirements</u>
- ❖ If contract not awarded to lowest bidder, EPA determines if approval required





Formal Competition 2: Competitive Proposals

- Use when the offerors' qualifications or technical approaches may be more important than price considerations
- \* Award either firm fixed-price or cost-reimbursement contracts
- Subject to formal competitive requirements:
  - RFPs must be publicized and include selection criteria
  - Technical evaluation method must be documented
- May use qualifications-based competitive selection for architecture and engineering firms

### **NOT ALLOWED**

#### Personal or organizational conflicts of interest

- Personal cannot be involved in selection, award, or administration of contract if real or apparent conflict of interest
- Organizational parent, affiliate or subsidiary organization must have written standards of conduct on organizational conflicts of interest

#### Practices that restrict competition

- Accepting assistance or templates from contractors planning to bid
- Imposing unreasonable competition requirements
- Making noncompetitive awards to consultants
- Discouraging contractors from submitting offers





### **REVIEW**

#### Procurement Best Practices

- ❖ Federal procurement following EPA guidance doesn't require EPA approval
- **EPA** approval needed when:
  - O Micro-purchases exceed \$50k (or use simplified acquisition)
  - Lowest-priced vendor/service not selected (justification must be provided to EPA)
- Share details of process with EPA PO before/during/after procurements
- Consider BABA and DBRA requirements and include clauses in RFPs, bids, contracts to selected contractors

#### Build America Buy America (BABA)

❖ Iron, steel, manufactured products, and construction materials used in federally funded infrastructure projects must be produced in the United States

#### Davis Bacon and Related Acts (DBRA)

- \* Requires payment of prevailing wages on construction contracts over \$2,000
- Prohibits contractors or subcontractors from coercing employees to forgo wages
- \* Requires overtime pay for hours worked beyond the standard

### EXAMPLE PROCUREMENT SCENARIO

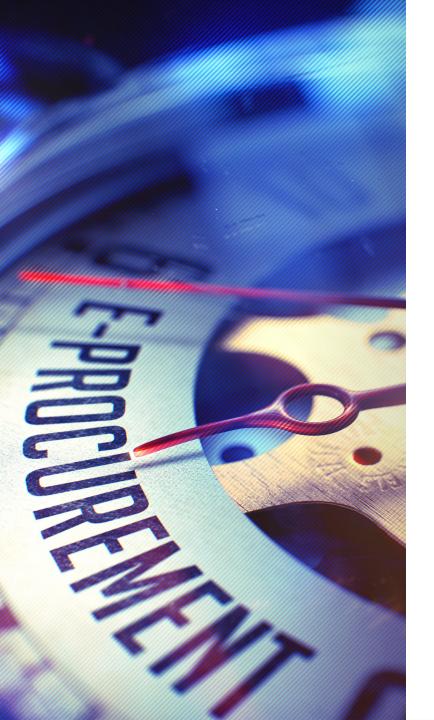
- ❖ Scope: Design and build a 15,000 sq. ft. LEED Gold-certified community center with an electric shuttle and charging station
- Contract Value:
  - Design Contract = \$280,000
  - Construction Contract = \$1,500,000
- \* Relevant info:
  - First bid package will be issued March 1, 2025
  - You interact with VP of a company planning to bid



### EXAMPLE PROCUREMENT SCENARIO

- ❖ What procurement method(s) should be used?
  - Competitive proposals for the design contract
  - Sealed bids for the construction contract
- Can the selected design firm provide templates for the construction contract?
  - Yes, design firm can provide templates and support if firm is not bidding on construction contract
- When is the earliest the first bid package can close?
  - o March 31, or 30 days after the public bid opens
- ❖ What requirements should be in the bid?
  - Experience with LEED, electric vehicle charging, and design of community centers





## Tips for Procurement in the Current Climate

- Simplified acquisition is quicker than open bidding; keep contracts under \$250,000 if possible.
- ❖ Prioritize contractors capable of efficient implementation, prompt billing, quick contracting, strong administration, and bulk purchasing ability.
- Group contracts by trade and use micro-purchases and simplified acquisitions when possible.
- ❖ Always account for BABA requirements and include them in contract flow-down clauses.
- ❖ For competitive proposals, prioritize thorough documentation of selection criteria, scoring, and the contract process.
- ❖ Work with your in-house counsel or L4GG to limit liability around BABA and DBRA compliance by shifting risk to subcontractors.



### **QUESTIONS?**

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