

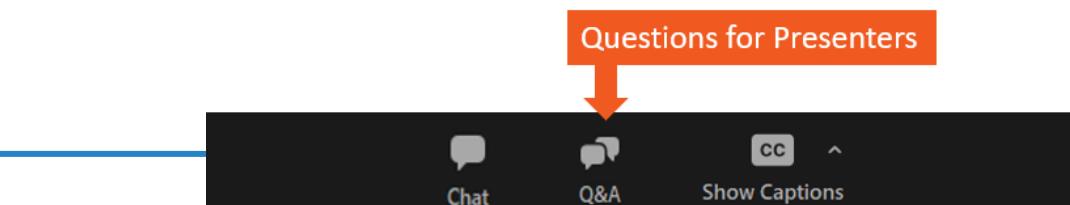
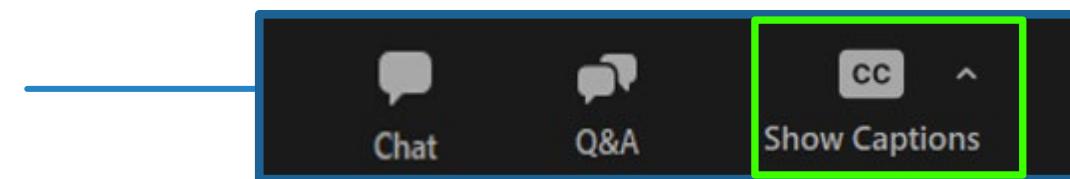


Community Grants Recipient Training Programmatic Requirements

June 2024

ZOOM LOGISTICS AND TECHNICAL ORIENTATION

- If you experience any technical difficulties with Zoom, please send a message through chat to Tech Support or email meetings@erg.com.
- For closed captioning of today's discussion, please select the closed captioning icon at the bottom of your screen.
- All participants are in listen-only mode now – you may ask questions in the using the Q&A feature throughout the presentation, and we'll address as many as possible during the Q&A portion at the end.



Presenters will post resources in the chat. Please use chat for Zoom technical questions only.

OVERVIEW



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COMMUNITY GRANTS PROGRAM BASICS

EPA Region / State	# of Projects	Funding Amount
R1 (CT, ME, MA, NH, RI, VT)	253	\$348,228,834
R2 (NY, NJ, PR)	255	\$394,743,906
R3 (DE, DC, MA, PA, VA, WV)	253	\$413,836,668
R4 (AL, FL, GA, KY, MS, NC, SC, TN)	311	\$589,259,397
R5 (IL, IN, MI, MN, OH, WI)	395	\$576,679,190
R6 (AR, LA, NM, OK, TX)	169	\$345,682,205
R7 (IA, KS, MO, NE)	60	\$139,190,915
R8 (CO, MT, ND, SD, UT, WY)	62	\$114,657,097
R9 (AZ, CA, HI, NV, Pacific Islands)	292	\$467,431,947
R10 (AK, ID, OR, WA)	170	\$343,371,649
Total	2,220	\$3,733,081,808

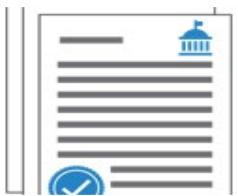
Congressionally Directed Spending / Community Project Funding (Community Grants Program)

[FY 2022](#), [FY 2023](#), and [FY 2024](#) Appropriations Acts: \$3.7B for 2,220 [specific water infrastructure projects](#)

- drinking water, wastewater, stormwater infrastructure
- water quality protection
- [EPA Community Grants Program](#)
- [Final Implementation Guidance](#)
- [Frequently Asked Questions](#)
- [Regional Points of Contact](#)

Community Grant recipients are required to follow all applicable federal requirements and must apply to receive grant funding.

COMMUNITY GRANTS PROGRAM BASICS, CONT'D



Appropriations Acts, Guidance

Congressionally identified specific projects, recipients and funding amounts.



Requirements

NEPA, BABA, AIS, Davis Bacon, Procurement, Cost Share...



Grant Applications

Recipients must apply for funding.



Grant Awards

Regional offices issue and administer direct grants to recipients.



Project Implementation

Recipients implement infrastructure projects, adhere to grant terms and conditions, submit payment requests and reporting.

EPA Community Grants Program

<https://www.epa.gov/sustainable-water-infrastructure/epa-community-grants>

ROLES AND RESPONSIBILITIES SUMMARY

EPA	Grant Recipients
<ul style="list-style-type: none">▪ Overall support, implementation guidance and procedures▪ Application and workplan review▪ Technical Corrections support▪ Cost share waiver review▪ Grant award issuance▪ Cost allowability▪ Payment request, supporting documentation review▪ Post-award grant monitoring and oversight <p>EPA Regional Points of Contact</p>	<ul style="list-style-type: none">▪ Internal controls, policies and procedures▪ Workplan, milestone schedule development▪ Grant application submittal▪ Technical Correction requests▪ Cost Share Waiver requests▪ Project, construction implementation▪ Payment request, supporting documentation submission▪ Applicable federal requirements adherence▪ Adherence to grant-specific and EPA's General Terms and Conditions▪ Reporting and recordkeeping

STEPS TOWARD FUNDING



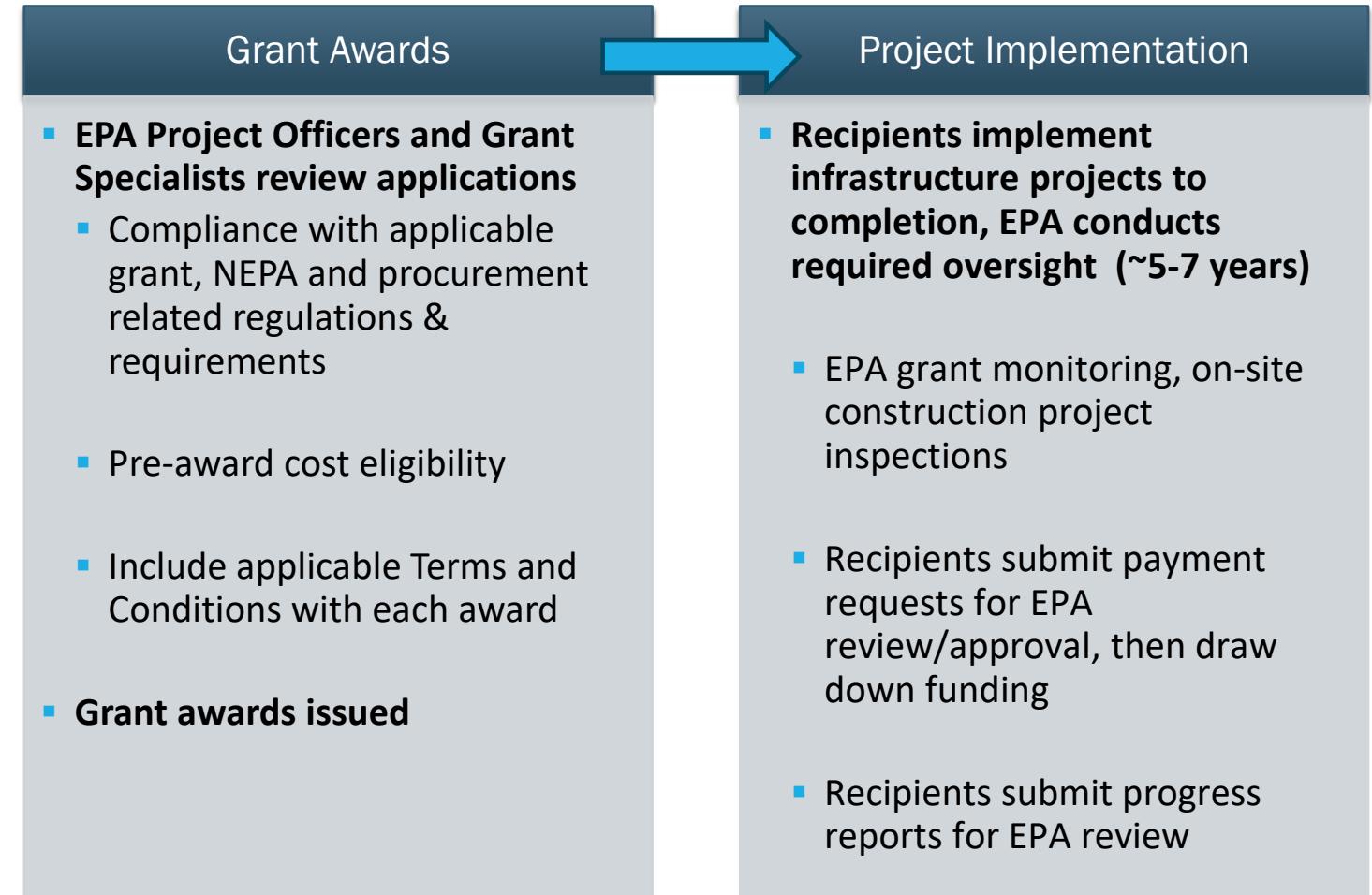
Program Guidance & Requirements

- All applicable regulations & requirements necessary for successful application packages
- Technical Corrections, Pre-award costs, Cost Share Waivers
- Associated Terms and Conditions applicable to each grant award

Application Development & Submission

- Application package (developed by recipient through continuous coordination with EPA)
- Procurement, Davis Bacon, BABA, AIS, NEPA compliant workplan
- Pre-award costs for consideration
- [Grants.gov](#) submission

STEPS TOWARD FUNDING, CONT'D



RECEIVING COMMUNITY GRANT FUNDS

Recipient defines project, including its goal and need

Recipient completes the following:

- Outlines project activities
- Initiates work plan development
- Develops project budget, identifying cost share funds and/or need for waiver

EPA, in coordination with the recipient, completes the National Environmental Policy Act (NEPA) environmental review process

Recipient completes the following:

- Finalizes work plan development that ensures procurement-related activities are consistent with applicable requirements:
 - Title 2 Code of Federal Regulations §§ 200.317–200.327
 - Build America, Buy America (BABA), American Iron and Steel (AIS)
 - Davis Bacon Act, Disadvantaged Business Enterprise (DBE)
- Continues budget development, outlining any pre-award costs

EPA reviews work plan, budget

Recipient prepares grant application package, submission via <https://www.grants.gov/>

EPA processes application and issues the grant award to recipient

Recipient implements the project (i.e., work plan activities) and submits reports, invoices, and supporting documentation to EPA

EPA reviews and approves invoices, conducts oversight.

NEPA Summary

To begin the NEPA process, the recipient determines whether to:

1. Request a categorical exclusion (CATEX) from EPA, or
2. Prepare and submit an environmental information document to EPA for review to support an Environmental Assessment (EA)

EPA, in coordination with the recipient, concludes the NEPA process through completion of one of the following:

- A CATEX determination (for minor actions)
- An EA and Finding of No Significant Impact (if the project has low/unknown potential for significant impacts)
- An Environmental Impact Statement and Record of Decision (if the project is known to have, or has high potential for, significant impacts)

EPA role

Grant recipient role

NEPA process/combined roles

PRE-AWARD COSTS



- ❑ Costs incurred prior to grant award may be allowable if the costs are in conformance with applicable federal and EPA regulations and if they are incurred on or after the start of the federal fiscal year in which funds were appropriated.
- ❑ Costs incurred by recipients prior to receiving grant awards will be assessed on a case-by-case basis, as part of EPA's review of the project workplan and budget.
- ❑ All costs incurred before EPA makes the award are at the recipient's risk.

Appropriation Date	Earliest Potential Pre-Award Costs (Federal and/or Recipient Cost Share)
Consolidated Appropriations Act, FY 2022	March 15, 2022
Consolidated Appropriations Act, FY 2023	December 29, 2022
Consolidated Appropriations Act, FY 2024	March 9, 2024

TECHNICAL CORRECTIONS

EPA is authorized to issue Community Grant awards to entities and for projects that fall within the scope of the appropriation language. Recipients are required to ensure that their projects align with the binding text: that which is written in the Appropriations Acts.

A Technical Correction is needed to modify any of the Project Purpose and/or Grant Recipient details as specified in the FY22 - FY24 Consolidated Appropriations Acts.

RECIPIENTS	EPA
<ul style="list-style-type: none">▪ Consult with EPA Regional Contact to determine if a technical correction is needed.▪ Submit technical correction requests in writing, including proposed new language.▪ May proceed with new purpose and/or recipient after request is approved.	<ul style="list-style-type: none">▪ If a technical correction is needed, submits request for consultation with Congress.▪ Notifies recipient when Technical Correction requests are approved.▪ May proceed with administering projects within the scope of <u>approved</u> corrected language.

COST SHARE

CALCULATING THE REQUIRED COST SHARE AMOUNT

Recipients are required to provide a cost share from nonfederal sources unless a cost share waiver is approved by EPA. For FY22, FY23, and FY24, the cost share amount is 20% of the total grant project cost.

Example using \$100k as the EPA contribution (i.e., the amount in Appropriation Act)

Identify the total grant project cost

- Divide the EPA contribution by .80 to calculate the total grant project cost:
- $\$100,000 \div 0.80 = \$125,000$.
- \$125,000 is the total grant project cost

Multiply the total grant project cost by .20 to determine the cost share amount

- $\text{Total grant project cost} \times .20 = \text{required cost share amount}$
- $\$125,000 \times .20 = \$25,000$
- \$25,000 is the required 20% cost share amount

Confirm:

Total grant project cost = EPA Contribution + Cost Share Amount.

$$\$125,000 = \$100,000 + \$25,000 \checkmark$$

* The cost share requirement is waived for Community Grants awarded to U.S. territories and to tribal entities. Grant applications are not required to reflect costs that exceed total grant project costs as calculated above; this is the minimum total grant project cost required to receive the full FY22, FY23, or FY24 appropriation amount.

COST SHARE, CONT'D

SOURCES

COST SHARE SOURCES

✓ **Private sources of funding**

✓ **Public sources of funding**

- U.S. Department of Housing and Urban Development (HUD), Community Development Block funds
- U.S. Department of Agriculture, Rural Development funds
- Appalachian Regional Commission funds
- Delta Regional Authority grants (FY24 projects)
- Specific funds from CWSRF and DWSRF programs (including loan repayments, interest earnings, bond proceeds, and fees, or a state contribution to the SRF above the statutorily required 20 percent match.)

✓ **In-kind services**

- E.g., recipient's administrative expenses for managing and overseeing the grant, provided that the expenses are not being reimbursed by the federal share of the grant award.



American Rescue Plan Act (ARPA) of 2021, may not be used as matching funds under this program.

COST SHARE CONT'D

WAIVER REQUESTS

WRITTEN REQUESTS FOR COST SHARE WAIVER CONSIDERATION

- EPA supports waiving required non-federal cost share for projects that primarily serve disadvantaged communities.
- EPA is using the discretion provided by the Appropriations Acts to consider waiving or reducing statutorily required non-federal cost share on Community Grant funds when requested and appropriate.

DOCUMENTATION EXAMPLE

MY CITYTOWN meets Criterion F (Communities with $\geq 11.7\%$ Population Receiving Food Stamps/SNAP Benefits).

Source:

<https://www.census.gov/acs/www/about/why-we-ask-each-question/food-stamps/>



Submit written request to the Regional EPA Project Officer for consideration.

- ✓ Include applicable Cost Share Waiver criteria, (as provided in the [Community Grants Cost Share Waiver Implementation Guidance](#))
- ✓ Include pertinent supporting documentation, source data retrieved from the websites & other publicly available datasets beyond the community profile page for Cost Share Waiver Criteria (e.g., URL, screenshots)

COST SHARE CONT'D

WAIVER REQUESTS

EPA WILL CONSIDER COST SHARE WAIVER CRITERIA A – E, UPON REQUEST:

A. Community median household income (MHI) is less than 80% of state MHI

B. Communities with an Upper Limit of Lowest Quintile Income \leq the Current National Upper Limit of Lowest Quintile Income

C. Communities with \geq 30.9% population living under 200% of poverty level

D. Communities with Poverty Rates \geq 20%

E. Communities with \geq 11.7% population receiving food stamps/SNAP benefits

EFFECTIVE MARCH 1, 2024 EPA NO LONGER CONSIDERS THE FOLLOWING CRITERIA

- ✗ Communities with \geq 3.4% unemployed population age 16 and older in civilian labor force.
- ✗ Communities \geq 12.1% vacant households.
- ✗ Communities within a county with a Social Vulnerability Index score higher than 0.80.
- ✗ Combined sewer and drinking water costs are greater than 2% of the 20th percentile household income

TERMS AND CONDITIONS

Terms & Conditions Applicable to Grants*

- Operations and Maintenance - Properly operate & maintain facilities for useful life of project
- Sites, Easements, and Rights-of-Way - legal opinion on securing sites, easements, and rights of way- must be submitted to EPA
- Signage Requirements – Signage must be displayed indicating EPA funded project
- Procurement Requirements – Compliance, document submission
- EPA [General Terms and Conditions](#)



*List is not exhaustive of all applicable Terms & Conditions

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NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

Evaluation of how federal grant actions may affect the quality of the environment. Environmental impacts must be considered before EPA can award the grant.

NEPA: KEY INFORMATION

EPA, in coordination with the recipient, concludes the NEPA process through completion of one of the following:

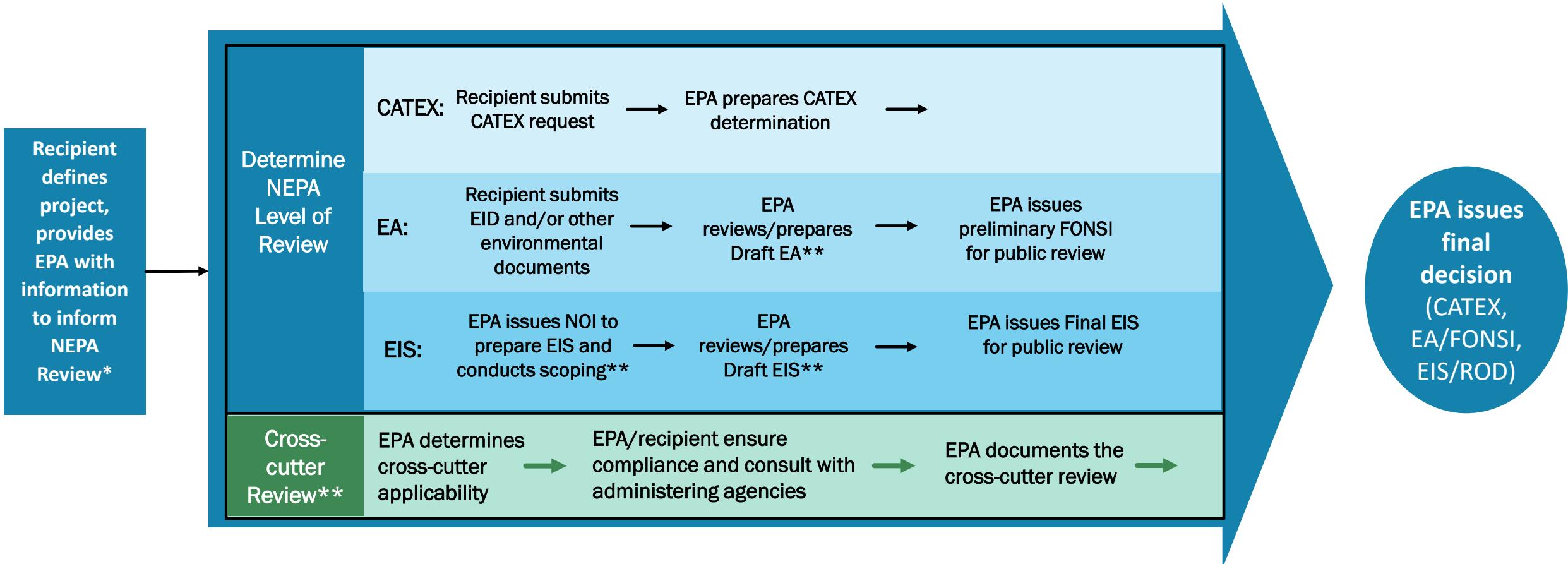
- A Categorical Exclusions (CATEX) determination
- An Environmental Assessment (EA) and Finding of No Significant Impact (FONSI)
- An Environmental Impact Statement (EIS) and Record of Decision (ROD)
- EPA issues a determination document even if project has undergone State Environmental Review Process (SERP) or other federal agency review

Compliance with certain federal cross-cutter authorities (i.e., Endangered Species Act, National Historic Preservation Act) must be fully completed before concluding the NEPA process.

The level of review and amount of time the environmental review takes depends on the project's level of impact to resources (minor/significant, beneficial/adverse environmental impacts)

- ✓ EPA grant may fund Environmental Information Document (EID) development, other analysis for cross cutting authorities or executive orders in order to provide supporting information
- ✗ EPA grant may not fund federal document development (e.g., EA or EIS)

NEPA, CONT'D



*May include EID, SERP, Draft CATEX/EA, or another Federal Agency NEPA Docs

**Cross-cutter coordination and compliance is mandatory for all Community Grants projects, regardless of the level of NEPA review (CATEXs, EAs, EISs).

NEPA, CONT'D

CATEX

EPA's [list of actions that can be categorically excluded](#) from preparing an [Environmental Information Document \(EID\)](#), includes actions relating to **existing infrastructure systems** (such as sewer systems; drinking water supply systems; and stormwater systems, including combined sewer overflow systems) that involve:

- ❖ Minor upgrading.
- ❖ Minor expansion of system capacity.
- ❖ Rehabilitation (including functional replacement) of the existing system and system components (such as the sewer collection network and treatment system; the system to collect, treat, store and distribute drinking water; and storm water systems, including combined sewer overflow systems).
- ❖ Construction of new minor ancillary facilities adjacent to or on the same property as existing facilities.

A CATEX may not be issued for actions that:

- ✖ Involve new or relocated discharges to surface or ground water.
- ✖ Will likely result in the substantial increase in the volume or the loading of pollutant to the receiving water.
- ✖ Will provide capacity to serve a population 30% greater than the existing population.
- ✖ Are not supported by the state, or other regional growth plan or strategy; or directly or indirectly involve or relate to upgrading or extending infrastructure systems primarily for the purposes of future development.

NEPA, CONT'D

EXTRAORDINARY CIRCUMSTANCES

A proposed action may be categorically excluded if the action fits within a category of action that is eligible for exclusion and the proposed action does not involve any extraordinary circumstances ([40 CFR 6.204\(a\)](#))

Extraordinary Circumstances: When is a Project Not Eligible for a CATEX?

Significant individual or cumulative effects	Significant adverse air quality effects	Significant controversy about a potential environmental effect
Disproportionately high and adverse effects on minority, low income, or federally-recognized tribal communities	Significant effects on environmentally important natural resource areas - e.g., wetlands, floodplains, environmentally significant agricultural lands, aquifer recharge areas, and wild and scenic rivers	Significant effect on the pattern and type of land use, population growth and distribution, or inconsistent with approved land use plans or federal land management plans
Significant effects on listed species or critical habitat	Significant effects on historic resources	Conflict with federal/state/local government or federally-recognized Indian tribe environmental, resource protection, or land use laws

NEPA, CONT'D EA AND FONSI

- EA incorporates appropriate documents (including the EID) by reference and discusses:**
 - the need for the proposed action; alternatives, including no action;
 - the affected environment, including baseline conditions that may be impacted by the proposed action and alternatives;
 - the environmental impacts of the proposed action and alternatives, including unresolved conflicts concerning alternative uses of available resources;
 - coordination or consultation regarding compliance with environmental cross-cutters and identifies and describes mitigation considered, including mitigation needed to ensure the action will not cause significant impacts.
- Finding of No Significant Impact (FONSI) is a decision document supporting a determination made by EPA that an action will not result in significant impacts.**
 - Supported by an EA and includes enforceable mitigation measures to reduce impacts below significance thresholds.
- EPA EA and preliminary FONSI must be made available for public review for 30 days prior to taking the action. Action can proceed after responding to any substantive comments received on the preliminary FONSI, and issuance of a final FONSI, if necessary. If no substantive comments are received, the preliminary FONSI (if signed) may be considered final, and the action may proceed.**

NEPA, CONT'D

ENVIRONMENTAL CROSSCUTTERS

Environmental Cross-Cutters

Applicable to Community Grants projects

Ultimately a Federal responsibility; however, grantees may assist in carrying out cross-cutter compliance

Significant impacts to environmentally related cross-cutters could affect your level of NEPA review needed

- Wetlands – E.O. 11990/12608 and CWA Section 404
- Threatened and Endangered Species – ESA
- Historic Properties – National Historic Preservation Act (NHPA)
- Environmental Justice – E.O. 12898
- Floodplains – E.O. 11988/12148
- Coastal Zones – Coastal Zone Management Act
- Wild and Scenic Rivers
- Essential Fish Habitat
- Clean Air Act
- Safe Drinking Water Act
- ...others



NEPA, CONT'D

ENVIRONMENTAL CROSCUTTERS: NHPA

EPA must comply with NHPA Section 106 for any “undertaking,” which is defined as a “project, activity or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including... those carried out with Federal financial assistance...”

NHPA 106 determination is required (CATEX, EA-FONSI, and EIS).
Determination: will the action affect historic properties?

NO POTENTIAL TO CAUSE EFFECTS on historic properties, assuming such properties were present

- No further Sec. 106 obligations.
- Finalize NEPA determination.
(Ex: Projects involving no construction activities)

NO HISTORIC PROPERTIES AFFECTED or **NO ADVERSE EFFECT**

- Submit letter **requesting concurrence** from SHPO/THPO, wait 30 days for review or objection
- Finalize NEPA determination.

ADVERSE EFFECT

- Consult further to resolve the adverse effect. Resolution of adverse effects often takes the form of a Memorandum of Agreement between the consulting parties.
- Finalize NEPA determination.

Recipients can initiate NHPA Section 106 consultation.

NEPA, CONT'D

ENVIRONMENTAL CROSCUTTERS: ESA

EPA must comply with ESA Section 7 to ensure “any action it authorizes, funds, or carries out...is not likely to jeopardize the continued existence of any listed species or results in the destruction or adverse modification of critical habitat.”

ESA compliance is required (CATEX, EA-FONSI, and EIS).

Determination: will the action affect listed species or designated critical habitat?

NO EFFECTS

FWS Consultation: not required.

FWS Notification/Correspondence: not required

Documentation: EPA must document the “no effect” determination to reflect why the action will have no impacts to federally listed threatened or endangered species or their critical habitat.

MAY AFFECT, NOT LIKELY TO ADVERSELY AFFECT

FWS Informal Consultation: EPA shall submit a letter requesting concurrence on the finding from the FWS/NMFS and must wait 60 days for FWS/NMFS review.

Concurrence from FWS/NMFS concludes informal consultation.

MAY AFFECT, IS LIKELY TO ADVERSELY AFFECT

FWS/NMFS Formal Consultation: EPA shall submit a letter requesting initiation of formal consultation with FWS/NMFS. The letter must contain specific information in accordance with the regulation and for “major construction activities,” must be accompanied by a **Biological Assessment (BA)**.

- EPA shall prepare (or request the recipient to provide) a BA if the action is a “major construction activity.” The BA determines whether any listed/proposed species or designated / proposed critical habitat are likely to be adversely affected by the action and is used in determining whether formal consultation is necessary.
- Recipients can initiate ESA Section 7 consultation.

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PROCUREMENT UPDATES

**NEW
UPDATE!**

UNIFORM GRANT GUIDANCE (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](#).

STATUTORY FLEXIBILITY

State/Local Compliance

Projects are not subject to Federal procurement requirements for competition and methods of procurement if the recipient has:

- ✓ Procured services or products through contracts entered into prior to March 9, 2024; and
- ✓ Complied with state and/or local laws governing competition (including laws/policies relating to participation by disadvantaged business enterprises or equivalent, as applicable, and method of procurement).

Covered Projects

Recipients request coverage by providing written statement to EPA PO affirming:

- Any contracts entered into prior to March 9, 2024 (include date of executed contract(s)); and
- Compliance with state and/or local laws governing competition.
 - Including: laws/policies relating to participation by disadvantaged business enterprises or equivalent, as applicable, and method of procurement.

Contracts and contract amendments will be considered covered by the provision upon receipt of written confirmation from EPA.

Federal Compliance: Non-Covered Projects

Recipients who do not qualify for this procurement flexibility must procure all services (professional, construction, etc.), supplies, and equipment awarded under this grant in accordance with all applicable federal requirements.

- Including: 40 U.S.C. 1101 et seq. (the Brooks Act) or an equivalent State qualifications-based procurement requirement, as applicable; 2 CFR Part 200; 2 CFR Part 1500; and/or 40 CFR Part 33.

All recipients, including those that qualify for the procurement flexibilities discussed above must comply with the requirements in the Davis-Bacon Act, American Iron and Steel (AIS), and Build America, Buy America (BABA) in any procurements and resulting contracts as applicable; these requirements are not waived by this provision and include incorporation of prevailing wage determinations and AIS/BABA in solicitation documents.

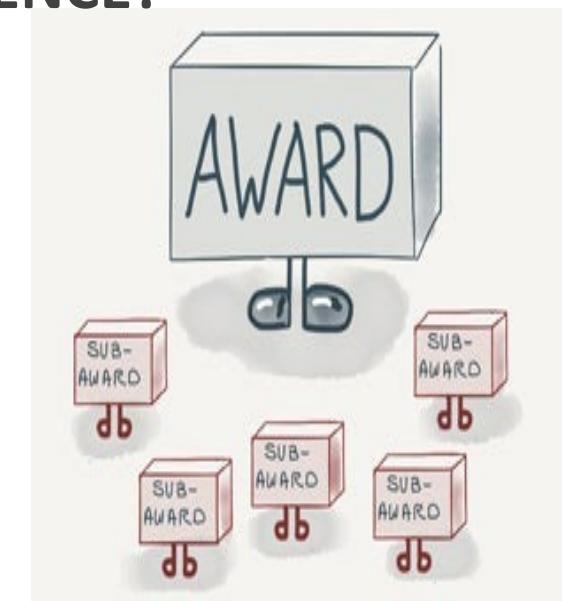
SUBAWARD V. PROCUREMENT CONTRACT



SUBAWARD V. PROCUREMENT CONTRACT: 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 [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).**

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 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.
- ✓ **Generally, Community Grant recipients' procurements must comply with several statutes/regulations, including*:**
 - ✓ [40 USC 1101 etc. \(the “Brooks Act”\)](#)
 - ✓ [2 CFR Part 200](#)
 - ✓ [2 CFR Part 1500; and/or](#)
 - ✓ [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, the following requirements are not applicable to every Community Grants project.

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.

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

▼ 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.

- 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.

A FEW GENERAL 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.

COMPETITION BASICS UNDER THE UGG

- Community grant recipients (including Tribal Nations for now), 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 comply 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 [[40 CFR 33.304](#)]

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

④ § 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

④ § 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.

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\(a\)\(2\)](#).

- 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.
- 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), which applies to *some* Community Grants). 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.

THE BROOKS ACT

While following the UGG procurement standards is the general rule, Community Grants projects that are inclusive of Clean Water State Revolving Fund eligible activities ONLY, irrespective of whether such projects are co-funded with CWSRF funding, must comply with the procurement processes for architectural and engineering (A/E) services as identified in 40 U.S.C. 1101 et seq. (the Brooks Act), or an equivalent State qualifications-based requirement.



THE BROOKS ACT (CONT'D)

NOTE: FOR projects with workplans inclusive of CWSRF eligible activities only!!

33 U.S.C. 1382(b)(14): A contract to be carried out using funds directly made available by a capitalization grant under this subchapter for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services shall be negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40 or an equivalent State qualifications-based requirement (as determined by the Governor of the State).

Why does this apply?

Because the language contained in the explanatory statements accompanying the FY 2022, FY 2023, and FY 2024 Consolidated Appropriations Acts that states: “Applicable Federal Requirements that would apply to a Clean Water State Revolving Fund or Drinking Water State Revolving Fund project grant recipient shall apply to a grantee receiving a CPF grant under this section.”

THE BROOKS ACT (CONT'D)

What does this requirement mean?

- ✓ For A/E professional services as described in the previous slide (not for other things an architect and/or engineer may do), the recipient must use competitive proposal procedures for **qualifications-based procurement where price is not a selection factor**.
 - Geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract. 2 CFR 200.319(c).
- ✓ The recipient should have discussions with at least 3 firms to consider anticipated concepts and compare alternative methods for furnishing services and select at least 3 firms considered to be the most highly qualified to provide the services required.
- ✓ Where equivalent State requirements are complied with, the source of the requirement (e.g., existing State legislation or regulation, etc.) must be stated, and a certification from the Governor of the State that the State's A/E procurement requirements are equivalent to 40 U.S.C. 1101 et seq. must accompany the grant application. In lieu of a certification from the Governor, the Attorney General's certification submitted with each grant application may include this certification.
- ✓ The recipient shall negotiate a contract with the most highly qualified firm to determine compensation that is fair and reasonable based on a clear understanding of the project scope, complexity, professional nature, and the estimated value of the services to be rendered.
 - In the event that a contract cannot be negotiated with the most highly qualified firm, negotiation continues in order of qualification.

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](https://www.ecfr.gov/ECFR/Title_2/2_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 & TRIBAL NATIONS



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.

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 Grants
- ❑ Making noncompetitive awards to consultants that are on retainer contracts
- ❑ Discouraging other contractors from submitting an offer by naming firms



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.”



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 Request For Proposal/Request For Qualifications 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 COST REASONABILITY IN EVALUATING PROPOSALS?

- Generally, yes, unless the task falls under the scope of the Brooks Act qualifications-based procurement procedures or equivalent State qualifications-based procurement requirement (i.e., Community Grants projects with workplans inclusive of CWSRF-eligible activities that are procuring for A/E services as identified at 33 U.S.C. 1382(b)(14)) or the task **CAN ONLY** be performed by a licensed A/E firm (such as when **REQUIRED** by federal, state, or local law)
 - 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.

COST REASONABILITY MUST BE CONSIDERED

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

Community Grants recipients may compare pricing for grant writing/application preparation and grant implementation services.

*Recipients may directly charge reasonable proposal preparation costs to the EPA grant.

Options for evaluating price reasonableness:

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



REMINDER: FOR COMMUNITY GRANTS PROJECTS WHERE THE *BROOKS ACT* APPLIES (i.e., those inclusive of CWSRF-eligible activities), PRICE MUST NOT BE CONSIDERED IN EVALUATING PROPOSALS.

WEIGHTED EVALUATION CRITERIA

➤ Must have weighted evaluation factors

- Document rationale for selecting the contractor (required by [2 CFR 200.318\(i\)](#))
- EPA recommends that the **reasonableness of cost/price proposal is at least 25% of the total percentage** (when applicable)
- **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) (when applicable)

➤ Evaluation criteria

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

WEIGHTED EVALUATION CRITERIA (CONT'D)

For example, responses will be evaluated against the following factors

- X% - Demonstrated experience in *[infrastructure project activities]*
- 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) – as 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 DOCS

■ Davis-Bacon:

- Davis-Bacon labor standards and prevailing wage requirements 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 **[Davis-Bacon does apply to Community Grants – but not all projects]**
- 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 (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.

■ American Iron and Steel (AIS)

***If you are unsure if any of the above requirements apply to your project, please consult 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 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. [\[General T&C #21\]](#)**

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)
 - [AIS](#) (as applicable)
 - [BABA](#) (as applicable)
 - [Davis-Bacon](#) (as applicable)
 - [Appendix A to 40 CFR Part 33](#) (must be included all procurement contracts)

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.

PROGRESS CHECK



Community
Grants Program
Overview

Roles and
Responsibilities
Summary

Steps Toward
Funding

Receiving
Community
Grants Funds

Pre-Award Costs

Technical
Corrections

Cost Share

National
Environmental
Policy Act (NEPA)

Procurement

**Davis-Bacon
Act**

Build America,
Buy America

American Iron
and Steel

Resources

Questions

DAVIS – BACON ACT

The [Davis-Bacon Act \(DBA\)](#) requires that all contractors and subcontractors performing construction, alteration, and repair (including painting and decorating) work under federal contracts in excess of \$2,000, pay their laborers and mechanics not less than the [prevailing wage and fringe benefits for the geographic location](#), as established by the U.S. Department of Labor (DOL).

- ✓ All laborers and mechanics employed by contractors and subcontractors with job duties that are physical and manual in nature
- ✓ All contracts must include specific language: minimum wages, withholdings, payroll and basic records, subcontracts, and Contract Work Hours and Safety Standards Act requirements (for contracts in excess of \$100,000).
- ✓ Recipients are required to periodically conduct spot checks of payroll data for certain contracts
- ✓ Davis-Bacon poster at work site

- For projects with CWSRF-eligible activities, only applies to **construction of treatment works**.
- For projects with DWSRF-eligible activities, applies to **any construction**.

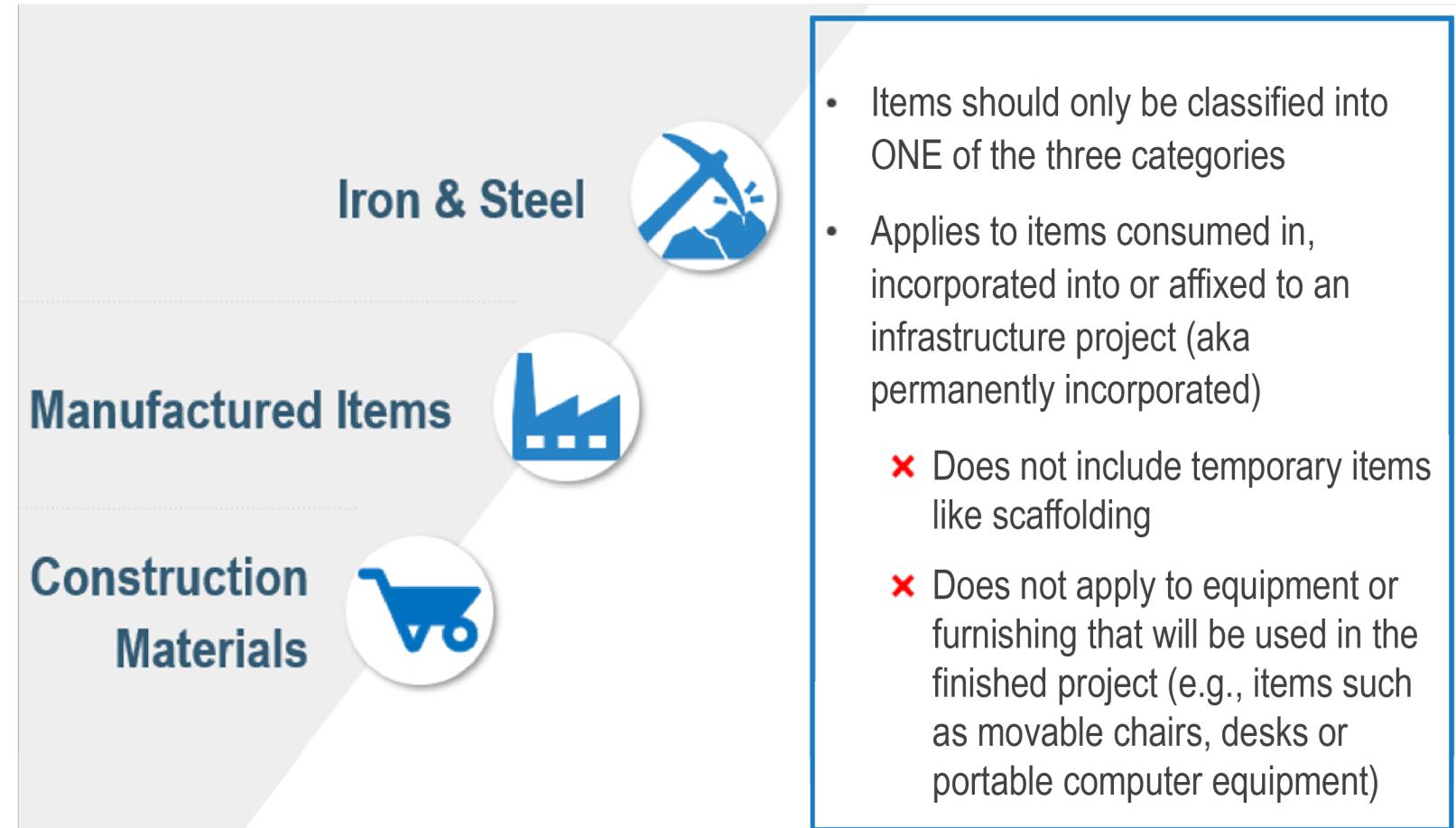
More information can be found here: [Davis-Bacon Act](#)



BUILD AMERICA, BUY AMERICA (BABA)

Unless covered by a waiver, procurement must comply with Build America, Buy America (BABA) requirements prior to grant award.

- ✓ **All of the iron, steel, manufactured products, and construction materials used in the project to be produced in the United States.**



BABA, CONT'D

- “Project” means: Any activity related to the construction, alteration, maintenance, or repair of infrastructure in the U.S.
- BABA applies to all Federal financial assistance for infrastructure (not just BIL funding), unless covered by a waiver
 - Recipients may request project-level BABA waivers (request letter)
 - De minimis Waiver
 - SRF Design Planning Waiver
 - EPA’s BABA waiver page:
<https://www.epa.gov/cwsrf/build-america-buy-america-baba-approved-waivers>
- BABA Terms and Conditions
<https://www.epa.gov/cwsrf/build-america-buy-america-baba>

Build America, Buy America (BABA)

On this page:

- [Build America, Buy America \(BABA\) Act](#)
- [Request for Information for Construction Materials](#)
- [Waiver Authority](#)

BABA Act Topics

- [BABA Act Overview](#)
- [Waivers Open for Public Comment](#)
- [Approved Waivers](#)
- [Resources](#)

Build America, Buy America (BABA) Act

- On November 15, 2021, President Joseph R. Biden Jr. signed into law the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the Build America, Buy America Act (“the Act”). Pub. L. No. 117-58, §§ 70901-52. The Act strengthens Made in America Laws and will bolster America’s industrial base, protect national security, and support high-paying jobs. The Act requires that no later than May 14, 2022—180 days after the enactment of the IIJA—the head of each covered Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the **iron, steel, manufactured products, and construction materials** used in the project are produced in the United States.” (Build America, Buy America (BABA) Act, P.L. 117-58, Secs 70911 - 70917).
- On April 18, 2022, the Office of Management and Budget’s (OMB) Made in America Office released its [guidance for implementing the BABA Act](#)
- [BABA Act Implementation Webinar Presentation \(April 2022\).pdf](#) (1.35 MB)
- [BABA Act Office of Water Implementation Procedures Webinar \(November 2022\).pdf](#) (3.00 MB)

Office of Water Build America, Buy America Act Implementation Procedures

- EPA is releasing the “Build America, Buy America Act Implementation Procedures for EPA Office of Water Federal Financial Assistance Programs.” The memorandum provides important information to support EPA’s grantees, contractors, and manufacturers in complying with BABA. BABA, which applies to all federal financial assistance programs, will bolster America’s industrial base, protect national security, and support high-paying jobs.
 - [Build America, Buy America Act Implementation Procedures for EPA Office of Water Federal Financial Assistance Programs \(pdf\) \(485.72 KB\)](#)

AMERICAN IRON AND STEEL (AIS)

The [American Iron and Steel \(AIS\)](#) provision requires Community Grant recipients to use iron and steel products that are produced in the United States for the construction, alteration, maintenance, or repair of a public water system or treatment works.

- ✓ Include AIS language in construction contracts
- ✓ Install only domestic iron & steel products
- ✓ Document compliance
- ✓ Certification letters

- [AIS Overview & AIS Guidance](#)
- [Informational Checklist for product/project specific waiver requests](#)
- **Waiver Request:** Recipients may request project-level AIS waivers (request letter)
<https://www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement>

State Revolving Fund American Iron and Steel (AIS) Requirement

The American Iron and Steel (AIS) provision requires Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) assistance recipients to use iron and steel products that are produced in the United States. This requirement applies to projects for the construction, alteration, maintenance, or repair of a public water system or treatment works.

The AIS provision is a permanent requirement for all CWSRF projects. The America's Water Infrastructure Act of 2018 extends the AIS provision for DWSRF projects through Fiscal Year 2023. For details, see Legal Authority below.

The appropriation language sets forth certain circumstances under which EPA may waive American Iron and Steel requirements. For details, see [Waiver Request Process](#).

On this page:

- [AIS Online Webinars](#)
- [AIS Guidance, Questions and Answers, and Training Materials](#)
- [Annual Reports](#)
- [Inquiries and Comments](#)
- [AIS Legal Authority](#)

AIS Topics

- [AIS Overview and Guidance](#)
- [Waiver Requests Received by EPA](#)
- [Approved National Waivers](#)
- [Approved Project Waivers](#)
- [Draft National Waivers](#)
- [Withdrawn or Denied Waivers](#)
- [Waiver Request Process](#)

Learn about the [Build America, Buy America \(BABA\) Act Requirements](#)

AIS Online Webinars

Upcoming Webinars

Check back for upcoming webinars.

View Recent Webinars

-  [AIS Requirement Annual Refresher Webinar \(pdf\)](#) (3.38 MB)

This webinar covers the AIS Requirement, including covered iron and steel materials, documenting compliance, and roles and responsibilities.

Recent Lunch and Learn Series

RESOURCES

- **EPA Community Grants Program Website:** The [EPA Community Grants web page](#) is updated as new information becomes available, including Frequently Asked Questions.
- **Grants Management Training for Applicants and Recipients:** [EPA's online training courses](#) are free and are designed to introduce potential EPA grant recipients to key aspects of the entire grant lifecycle, from preparation of an application through grant closeout. Additional [information on developing grant budgets](#) is also available.
- **Procurement:** The [Best Practice Guide for Procuring Services, Supplies, and Equipment Under Assistance Agreements](#) is a good resource in assisting grant recipients (other than states) with meeting federal procurement requirements.
- **Grants Policies:** [EPA grant policies](#) affect how recipients manage and administer EPA assistance agreements.
- **EPA's Guidance on Selected Items of Cost for Recipients** provides information on the allowability of specific costs.
- **Where do I start?** See [How To Prepare for Funding](#) for key steps toward recipient readiness.
- **Where do I apply?** Prior to applying in Grants.gov, recipients should register with SAM.gov, ensure the SAM.gov registration is not expired, obtain a UEI number through the SAM.gov registration process, and establish an EBiz Contact. See [Accessing the Application Package](#) for steps to navigate Grants.gov.
- **Budget Preparation Guidance:** [Interim General Budget Development Guidance for Applicants and Recipients of EPA Financial Assistance](#)



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These Sites!



Questions