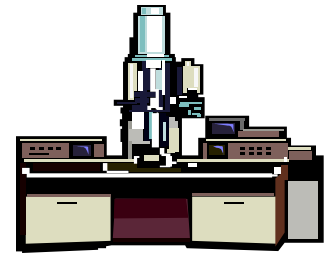
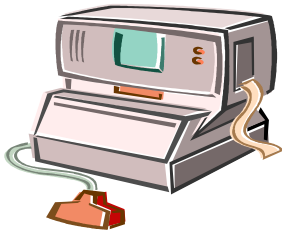


GUIDANCE FOR NON-PROFIT ORGANIZATIONS



PURCHASING SUPPLIES, EQUIPMENT, AND SERVICES UNDER EPA GRANTS

As a recipient of EPA grants and cooperative agreements you will likely find it necessary to buy supplies, equipment, and services in order to complete the work under your EPA awards. EPA developed this guidance to help ensure you meet EPA requirements when making such necessary purchases.

EPA's Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations regulation (40 CFR Part 30) applies to EPA grants (by the way, when we say "grants" from now on, we mean grants or cooperative agreements) for non-governmental recipients, such as your organization. This guidance is based on the purchasing requirements of that regulation. It does not supersede the regulation itself or an applicable statute or Executive Order. Some other EPA regulations may establish purchasing requirements that apply to certain programs. At this time, only the Grants for Technical Assistance (TAG) regulation (40 CFR Part 35, Subpart M) includes such program specific regulations. If you are a recipient of a TAG grant, review that rule to ensure you comply with the specific requirements for your grant.

EPA often calls purchasing under grants "**procurement**", but in this guidance we use the term "**purchasing**".

When EPA selects your application for funding, EPA will before award, assure your organization meets certain management capability requirements, including having an adequate purchasing system. If EPA has not reviewed your organization's management capability within four years and the proposed grant amount is for \$200,000 or more, EPA will request you to fill out EPA Administrative Capability Questionnaire in Appendix A of the EPA Order that includes questions related to your purchasing system. This guidance will help assure you can answer those questions affirmatively.

This guidance does not apply to obtaining the services of individual consultants. A consultant is a person who has expertise in a particular field (specialized skills) and who serves solely in an advisory capacity and is paid at a daily or hourly rate. A consultant primarily provides views or opinions on problems or questions you present. The term includes experts or persons with excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field. EPA has separate guidance on obtaining the services of consultants ([Consultant Fees under EPA Assistance Agreements \(GPI 04-04\)](#))).

This guidance also does not apply to subgrants you may award. A subgrant is an award of financial assistance in the form of money, or property in lieu of money, which you make to an eligible subrecipient. The term does not include recipient purchases. EPA has other guidance applicable to subgrants. Contact your project officer or grants specialist for that guidance. (Unless your project officer approves in writing, you cannot make a subgrant to a profit-making organization.)

The guidance does apply to purchases your subrecipients make under a subgrant.

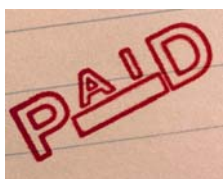
BASIC PURCHASING SYSTEM REQUIREMENTS

It is unlikely you will purchase the supplies, equipment, and services you need for your grant at an auction, but EPA's purchasing guidance and requirements are designed to ensure that what you buy you get at a reasonable price in a fair and openly competitive way. Many organizations that receive EPA grants have their own purchasing requirements and systems. If you have your own system which meets the minimum standards of the EPA regulations as explained in this guidance, you may use that system. If your system does not meet EPA's minimum

requirements you may amend the system to meet EPA requirements, but, in any event, **you must conduct your purchasing in accordance with the minimum EPA requirements.**

This guidance is based on and provides cross-references to the applicable regulations and can help ensure you have a strong purchasing system to ensure you make sound purchasing decisions.

RESPONSIBILITY



You are responsible for the settlement and satisfaction of all contractual and administrative issues arising out of contracts under your grant. EPA will not be involved in resolving such issues as disputes, claims, protests, source evaluation, or other matters of a contractual nature. You must, however, refer violations of law to the Federal, State or local authority with jurisdiction ([40 CFR 30.41](#)). You should also inform EPA of any violations.

You must ensure you do not purchase unnecessary things under your grant.

You must evaluate whether it is most economical to lease rather than purchase equipment. If you determine leasing equipment is more economical than purchasing it, you should assure the terms of the lease terms are based on the best equipment for the best price.

Also, the fact that EPA approves your grant does not ensure EPA will allow the cost of all activities or purchases you make under the grant, even if the activities and purchases are identified in your application. If, at any time, EPA finds that an activity or purchase is not necessary or does not comply with EPA regulations, EPA may disallow the cost. This authorizes EPA to disallow the cost of a contractor, for example, even if EPA approved your grant application that indicated you would be using the services of a contractor, if, for example, EPA subsequently determined you did not obtain the contractor's services in accordance with EPA's minimum standards.

CODE OF CONDUCT



You must have written standards of conduct that apply to employees involved in the award and administration of contracts for supplies, equipment, and services ([40 CFR 30.42](#)). The code must ensure that:

- Your employee, officer or agent does not participate in the selection, award, or administration of a contract under an EPA grant if the employee, any of the employee's family members or partners, or an organization which employs or is about to employ any of these persons, has a financial or other interest in the organization selected for the contract. You may, however, set standards for situations in which the financial interest is not substantial.
- Your employee does not solicit or accept gratuities, favors, or anything of monetary value from your contractors or potential contractors. You may establish standards allowing a gift that is an unsolicited item of nominal value.
- If an employee violates the code, the employee is subject to disciplinary action.

EPA may disallow costs of purchases if you or your employees violate the Code of Conduct requirements.

COMPETITION



You must, to the maximum extent practicable, ensure open and free competition in your purchasing ([40 CFR 30.43](#)). Some situations that are indicators of unnecessarily restrictive competition include:

- Imposing unreasonable requirements on firms in order for them to compete for your business.
- Requiring unnecessary experience and excessive bonding.

- Allowing noncompetitive pricing practices between firms or between affiliated companies.
- Permitting organizational conflicts of interest.
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements.
- Taking arbitrary actions that favor one firm over others.

COST AND PRICE ANALYSIS

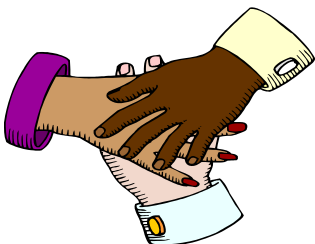


Your purchasing system must ensure the cost or price of your supplies, equipment, and services is reasonable ([40 CFR 30.45](#)). You do this by conducting a cost or price analysis for each procurement action.

- **Cost analysis** is the review and evaluation of each element of cost to determine whether the total price is reasonable.
- **Price analysis** includes the comparison of price quotations submitted, market prices, bid prices for firm fixed price contracts, or similar information.

You must determine the method and depth review based on the facts surrounding your particular situation. As a starting point, you must make independent estimates of expected prices or costs before receiving bids or proposals. [Appendix A](#) to this guidance explains the type of reviews you must do in various situations.

DISADVANTAGED BUSINESS OPPORTUNITY




You must make positive efforts to use disadvantaged businesses, including small businesses, minority-owned firms, women's business enterprises, and firms in labor

surplus areas, whenever possible ([40 CFR 30.44\(b\)](#)). Actions you must take to accomplish this include:

- Ensuring that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- Making information on future opportunities available and arrange time frames for purchases which encourage and facilitate participation by disadvantaged businesses. You should place qualified disadvantaged businesses on solicitation lists and ensure these firms are notified of opportunities.
- Encouraging firms competing for larger contracts and which intend to subcontract to consider ways to allow disadvantaged businesses to compete for the subcontracts by dividing contracts, when economically feasible, into smaller tasks or quantities.
- Encouraging contracting with consortiums of disadvantaged businesses when a contract is too large for one of these firms to handle individually.
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of disadvantaged businesses.
- Requiring your prime contractors who award subcontracts to take these steps.

Your grant will include a term and condition requiring you to submit annually, by October 30, reports relating to disadvantaged business utilization. The report must be prepared on [EPA Form 5700-52A](#).

SOFTWARE AND WRITTEN MATERIALS

 You may copyright any software or written material developed, or for which ownership was purchased, under an award. EPA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so ([40 CFR 30.36](#)). For additional information on EPA rights to material

you develop under a grants, see also [EPA's Rights to Copyrighted Software and Written Materials Developed under Assistance Agreements GPI-01-03](#).

DEBARMENT AND SUSPENSION



You must not award a contract of \$25,000 or more to any person (organization or individual) debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs ([40 CFR 30.13](#)). You must also ensure that neither your subrecipient or your contractor awards a contract or subcontract of \$25,000 or more to any person debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs. **Further, if your grant or EPA's regulations ([see below](#) and [see 40 CFR 30.44\(e\)](#)) require EPA approval of a contract before you award it or the contract is for federally required audit services, you must not award a contract of any amount to a debarred or suspended or otherwise excluded person.**

(EPA's rules under which contractors may be debarred or suspended are found in the Governmentwide Debarment and Suspension (Nonprocurement); and Statutory Disqualification under the Clean Air Act and the Clean Water Act regulation at [40 CFR Part 32](#).)

You can find the list of debarred, suspended, and excluded persons at: [Excluded Parties List System](#).

The list contains the names of persons debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549 and 12689. (See also [40 CFR Part 30, Appendix A, 8](#).) When searching this site, search by the **name of the contractor**, not by agency, to ensure you find all debarred, suspended or otherwise excluded contractors. Since some debarred contractors are ineligible under only certain programs, you must also check the cause and treatment code to determine the circumstances related to each contractor. It may be necessary to contact the agency that imposed the suspension, debarment or exclusion to determine the effect of the action.

RECORDS



You must maintain records that detail the history of each purchase ([40CFR 30.46](#) and [30.53\(b\)\(2\)](#)). For purchases which exceed \$100,000, these records must include the rationale for the method of procurement, the reason you selected the contract type, your justification for lack of competition when competitive bids or offers are not obtained, the reasons for contractor selection or rejection, and the basis for the contract price, including documentation of required price and cost analyses (**Appendix A of this document**).

CONTRACT PROVISIONS



You must ensure your contracts comply with applicable state and local law. Your contracts must also reflect the provisions listed in **Appendix B of this document**. If your standard contracts meet the requirements of **Appendix B**, the clauses need not be repeated.

If you suspect or you receive reports that a contractor violated the EPA required contract provisions you must report those violations to your EPA project officer.

Also, if your contract is subject to the Davis-Bacon Act (generally construction contracts), that requires contractors to pay wages to laborers and mechanics at least equal to minimum wages specified in a wage determination made by the Secretary of Labor, you must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. You must report all suspected or reported violations of Davis-Bacon Act requirements to the EPA project officer.

CONTRACT TYPES

You must decide which type contract is appropriate given the circumstances of each purchase. You may use your standard contract types for contracts under your EPA grant. Contract types include:

- **Fixed price contracts.** You should use fixed price contracts when effective competition is likely based on a complete product description and clear plans and specifications. There should not be any significant technical or engineering unknowns. The contractor must furnish the goods or services for the fixed price, and so assumes significant risk. Profit is not stated or negotiated separately.
- **Cost reimbursable contracts.** You should use a cost reimbursement contract when it is not feasible to award a fixed price contract. **The contractor's cost and profit must be negotiated separately.** Often, the contractor must satisfactorily complete only the amount of work equivalent to the estimated cost to qualify for the negotiated profit; the contractor may not complete the entire project. Thereby, the contractor assumes less risk than under a fixed price contract. Alternatively, you may negotiate a cost reimbursable contract that includes a ceiling which may not be exceeded but which requires completion of the work. In this situation, the risk to the contractor is increased.
- **Cost Plus Type Contracts Prohibited.** Percentage of construction cost and cost plus a percentage cost contracts provide an incentive for the contractor to increase costs in order to increase profit. These contract types must not be used.

CONSTRUCTION CONTRACT BONDS



You must ensure EPA's interest in construction or facility improvement contracts under your grant is adequately protected. Construction bid and bond requirements are listed in [Appendix C to this document](#).

PURCHASING METHODS

You must determine the purchasing method (examples below) that best fits your needs and circumstances for each purchase.

SMALL PURCHASE METHOD

Small purchase is a relatively simple and informal method for purchasing supplies, equipment, and services that do not cost more than \$100,000. (Your organization may have lower small purchase limits in its procedures. If so, follow those limits.)

If you are purchasing goods or services with an expected value of less than \$100,000, you should generally review catalogs or contact three or four organizations which can provide goods or services meeting your needs and obtain price quotes. You should select the lowest priced item or service meeting your requirements. You must, of course ensure:

- The employee selecting the offer does not have a conflict of interest with any of the organizations contacted.
- You make it possible for and encourage disadvantaged businesses to provide offers, to the extent possible.
- The offer is not from a debarred or suspended person.
- You clearly document why you selected other than the lowest priced supply, equipment, or service, if this is done.
- You keep files of the purchase, including the list of organizations contacted and the prices of each.

You do not need to obtain bid or performance bonds for small purchases.

SEALED BID OR FORMALLY ADVERTISED PURCHASING METHOD

For purchases with an estimated price of more than \$100,000, the sealed bid purchasing method is generally preferable to other methods if the successful bid can be determined based mostly on price. Under this method, you must advertise for firm-fixed-price proposals or bids from organizations and firms able to do the

work. You then award the contract (lump sum or unit price) to the responsible bidder whose bid conforms to the terms and conditions of the solicitation and is the lowest in price.

Sealed bidding is feasible if:

- You have a complete, adequate, and realistic specification or purchase description.
- It is likely there are two or more responsible bidders willing and able to compete for the contract.
- The purchase will result in a firm-fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

If you use the sealed bidding method, you must:

- **Publicly advertise an invitation for bids** allowing potential bidders sufficient time to prepare bids before the public bid opening. Advertisements should be published in newspapers of general circulation, the Commerce Business Daily, trade journals, and your purchasing web sites. They may also be sent to contractors who are likely to be interested in providing the goods or services.
- The advertisement must make clear that any or all bids may be rejected if there is a sound documented reason. The advertisement must contain:
 - A clear, accurate description of the technical requirements for the supplies, equipment or service to be purchased.
 - Requirements that the bidder must meet and all other factors you will use to evaluate bids or proposals.
 - A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

- The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.
 - The acceptance, to the extent practicable and economically feasible, of supplies, equipment, or service dimensioned in the metric system of measurement.
 - Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.
- **Take steps to involve disadvantaged businesses** (see section on Disadvantaged Business Utilization in this document), including sending known firms the advertisement requesting bids.
 - **Indicate, in the advertisement, the location of any specifications** and attachments which define the item or supplies, equipment, or service to be purchased.
 - **Before bid opening, ensure none of the bidders are debarred, suspended, or otherwise excluded.** If any are, reject those bids before opening them.
 - **Publicly open bids** at the time and place announced in the advertisement.
 - **Award a fixed price contract to the lowest responsive and responsible bidder.** Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs may be considered in determining which bid is lowest. (If you do not intend to accept the lowest bid for a contract over \$100,000, notify the EPA project officer and allow for EPA review, if requested. [See Section on EPA pre-purchase review below.](#))
 - **Include, in the signed contract, the appropriate contract provisions.** (See [Appendix B of this document](#)).
 - **If the contract is for construction work, require the contractor to provide appropriate bid, performance, and payment bonds** when the contract is signed. (See [Appendix C of this document](#)).

If you award the contract award to the lowest responsible bidder for a fixed price and there is more than one bidder, no further price or cost review is required.

COMPETITIVE PROPOSAL PURCHASING METHOD

When it is not appropriate to use the sealed bidding method (i.e., the award cannot be made based primarily on price) for purchases exceeding \$100,000, the next most preferred method is generally called the competitive proposal method. Under this method, you will use factors such as capability of the bidder, relationship of the proposed work to your needs, the qualifications of the bidders staff, the availability of necessary resources, the likelihood of the bidder's success, and the price. The contract will normally be a fixed price or a cost reimbursement type contract.

If you choose to select a contractor using the competitive proposal method, you must:

- **Publicly advertise for proposals** identifying the nature of supplies, equipment, or services needed, the evaluation factors and their relative importance, a preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.
- **Take steps to involve disadvantaged businesses** (see section on [Disadvantaged Business Utilization](#)), including sending known firms the advertisement requesting offers.
- **Develop a system for conducting technical evaluations** of the proposals to select the successful bidder.
- **Using the evaluation system and the criteria in the advertisement, select the responsible firm whose proposal is most advantageous**, with price and other factors considered.
- **Include the appropriate contract provisions in the signed contract.** (See [Appendix B of this document](#).)
- **If the contract is for construction work, require the contractor to provide appropriate bid, performance, and payment bonds** when the contract is signed.
- **If the contract award is not for a firm-fixed price, conduct a cost review to ensure the price is reasonable.** Your contractor must furnish estimated cost information, stating profit separately, to allow you to complete the review. (See [Appendix A of this document](#).)

To obtain architectural/engineering (A/E) professional services, you may use a qualifications based form of the competitive proposal method. The difference between this method and the normal competitive proposal method is that, after you open contractor's proposals, you may evaluate competitors' qualifications and select the **most qualified** competitor, subject to negotiation of fair and reasonable compensation. **Price is not a selection factor.** You then negotiate a price with the most qualified firm. If you cannot reach agreement on price with that firm, reject the bid and open negotiations with the next most qualified firm. In other respects, this method is similar to the competitive proposal method. You must conduct a cost review before agreeing on price. (See [Appendix A of this Document](#).)

NON-COMPETITIVE NEGOTIATION OR SOLE SOURCE PURCHASING METHOD.

The noncompetitive negotiation purchasing method is appropriate only when none of the other methods are appropriate based on the circumstances. This method should be used sparingly in unusual circumstances. Appropriate circumstances include if:

- You determine the item or service is available only from one source. **The fact that you have a long-standing relationship with a contractor does not mean the item or service is available from only one source.**
- You determine public exigency or emergency will not permit a delay resulting from competition.
- The contract amount exceeds \$100,000 and you request and obtain EPA approval to use the noncompetitive proposal method for some other reason.
- In response to an advertisement for bids or proposals, only one bidder responds.

You must conduct a cost analysis of noncompetitive proposals. (See [Appendix A of this Document](#).) In evaluating whether the cost of a sole source purchase is justified, your cost analysis should consider the contractor's charges for similar work for customers who are not using Federal funds.

You should contact the EPA project officer before using the non-competitive proposal purchasing method for professional services contracts and equipment purchases even if the contract amount is less than \$100,000. EPA may include a term and condition in grants where purchases may exceed \$100,000 requiring you to contact the project officer before making sole source purchases. The project officer will likely instruct you to submit the proposed contract and related information, including cost information provided by the bidder and your justification for the non-competitive method, for EPA review.

EPA REVIEW OF GRANT RECIPIENT PURCHASES

EPA and other Federal agency staff may review actions related to your purchasing before or after award. The fact that EPA approves your grant does not ensure EPA will allow the cost of all activities or purchases you make under the grant, even if the activities and purchases are identified in your application. If, at any time, EPA finds that an activity or purchase is not necessary or does not comply with EPA regulations, EPA may disallow the cost ([40 CFR 30.62\(a\)\(2\)](#)). EPA may disallow the cost, for example, even if EPA approved your grant application that indicated you would be using the services of a contractor, but subsequently determines you did not obtain the contractor's services in accordance with EPA's minimum standards.

EPA PRE-AWARD SYSTEM REVIEW

As stated above, when EPA selects your application for funding, EPA will before award, evaluate available information to assure your organization has an adequate purchasing system. If EPA has not reviewed your organization's management capability within four years and the proposed grant amount is for \$200,000 or more, in accordance with the [EPA Policy on Assessing Capabilities of Non-Profit Applicants for Managing Assistance Agreements](#), (see [EPA 5700.8](#)), EPA will request you to fill out **EPA Administrative Capability Questionnaire in Appendix A of the EPA Order**. The questionnaire includes questions related to your purchasing system. This guidance will help assure you can answer the purchasing system questions affirmatively.

EPA PRE-PURCHASE REVIEW

If required by a term and condition of your grant, you must offer the EPA project officer the opportunity to review information related to your purchases before you sign contracts if ([40 CFR 30.44\(e\)](#)):

- Your purchasing procedures or operation fail to comply with EPA standards and regulations (i.e., this guidance).
- Your intend to award a contract that exceeds \$100,000 without competition or you receive only one bid or offer in response to a solicitation.

- Your purchase exceeds \$100,000 and specifies a “brand name” product.
- Your purchase exceeds \$100,000 and you intend to award a contract to other than the apparent low bidder under a sealed-bid procurement.
- You propose a contract modification that changes the scope of your contract or increases the contract amount by more than the \$100,000.

You must contact your EPA project officer for guidance as soon as you are aware of any of these situations.

EPA POST PURCHASE REVIEW

EPA may also review your source documentation for purchases after they are made ([40CFR 30.46](#) and [30.53\(b\)\(2\)](#)). EPA staff may review your management systems for compliance with EPA requirements. We may conduct a desk review, in which case we will review any information we have in our files, find on the internet, or request and receive from you. This may include information related to particular purchases. We may also conduct a review at your location (on-site review). The reviewers will evaluate much the same information as under a desk review. EPA staff will contact you to arrange on-site reviews so they are as convenient as possible for you. Our review will evaluate your compliance with EPA requirements, including Disadvantaged Business Utilization, contract clauses, record keeping, cost and price review, as well as your purchasing methods.

SINGLE AND EPA AUDIT

If your organization spends \$500,000 or more in a fiscal year in Federal (not just EPA) grant funds, you must obtain a single or program-specific audit in accordance with the requirements of [Audits of States, Local Governments, and Non-profit Organizations, OMB Circular A-133](#).

If you receive only one federal grant and elect to do a program specific audit, it is likely your auditor will review your purchasing practices under

EPA's grant. If you elect to have your auditor conduct a single audit, the auditor may review your EPA grant purchases.

Also, EPA's Office of Inspector General or the General Accounting Office (GAO) may conduct an audit of your EPA grants. EPA and GAO auditors are likely to review your purchasing system as well as your purchases. These audits will be planned and performed in such a way as to build upon work performed by your auditors.

CONDUCTING PRICE AND COST ANALYSES

EPA regulations require you to conduct a price or cost review for each purchase you make to support you grant (40 CFR 30.45).

PRICE REVIEW

A “**price review**” is an evaluation of a proposed price, without regard to the contractor's separate cost elements and proposed profit, to determine the price is reasonable. **Before completing a purchase, you must conduct a price review for each small purchase (\$100,000 or less) and for each fixed price contract.** The following guide will assist you in completing required price reviews.

Cost Estimate – Develop an independent cost estimate for the supplies, equipment, or service you will be purchasing. This estimate may be based on such things as you and your staff’s experience with similar purchases, a review of catalog or off-the-shelf prices, prices or costs for similar services provided to customers who do not receive Federal funds, or other relevant information. If detailed plans and specifications for a fixed price contract are developed for bidders, the person or firm developing those plans should develop a detailed price estimate.

Comparison of Prices – Compare prices obtained from catalogues, suppliers, or bidders to your independent estimate.

Price Reasonableness –

- A. If the offeror or bidder’s price appears reasonable based on your independent estimate and other appropriate information, purchase the supply, equipment, or service.

- B. If the offeror or bidder’s price is significantly higher than your independent estimate, review your requirements to determine whether unnecessary, overly restrictive, or complex requirements caused the higher than expected price. (Even if the price is significantly lower than expected, you should review the stated requirement or plans and specifications to ensure they are complete and will result in the

supply, equipment, or service you need.) It may help, in making your determination, to talk to those providing quotes or bids.

1. If, after this evaluation, you determine the price is reasonable, considering the circumstances, purchase the supply, equipment, or service.
2. If you determine inappropriate requirements for the supply, equipment, or service resulted in an unreasonable price or the price is unreasonable, make adjustments and obtain new offers or bids.

COST REVIEW

A “**cost review**” is the evaluation of each major contract cost category to determine reasonableness of each category and of the total cost of a contract or change order. **Cost review must be performed when using negotiated cost type contracts, not fixed price contracts.** Cost categories include personnel, fringe benefits, travel, subcontracting, indirect costs, profit and the like.

To obtain the information you need to conduct a cost review, you must require your offerors to provide cost data with their offers. EPA does not provide a form for this price data, so unless you prescribe a form, offerors may submit their cost data in any appropriate format. The offeror should certify that the information reflects complete, current, and accurate data.

The following is a general list of cost categories under which contractors will submit cost information and guidance on how you should evaluate each category:

Personnel Costs – Costs for labor directly related to the contract.

For Example the offeror will likely provide information that looks like this:

Category	Estimated Hours		Hourly Rate		
Professional	300	x	\$30.00	=	\$ 9,000
Nonprofessional	2000	x	25.00	=	50,000
Clerical	800	x	15.00	=	12,000
Total Direct Personnel Cost					\$71,000

Consider:

- A. Whether the level of effort or the total amount of time proposed is consistent with the effort required to complete the contract.
- B. The labor mix or the labor categories proposed to ensure they are consistent with the difficulty and technical nature of the work _ professional versus nonprofessional versus clerical.
- C. The proposed salaries, including reasonable escalation factors to ensure they are consistent with the offerors' actual pay scales. Generally, the conversion of annual salaries into hourly rates is accomplished by dividing the annual salary by 2,087 hours (assuming an 8 hour work day).

Fringe Benefits – Personnel costs other than employees' direct salary or pay (i.e., employer's portion of FICA insurance, retirement, sick leave, holiday pay, and vacation cost. While these costs are normally accumulated in a pool and allocated using percentages as shown below, offerors may calculate actual fringe benefit costs for each employee who will work on your job. Either method is acceptable if applied consistently.

Example:

Category	Estimated Fringe Benefit Rate		Total Hourly Pay		Fringe Benefit Amount
Professional	10%	x	\$9,000	=	\$ 900
Nonprofessional	10%	x	50,000	=	5,000
Clerical	10%	x	12,000	=	1,200
Total Fringe Benefit Cost					\$7,100

Consider:

A. Whether the fringe benefit rate applied to the direct labor base corresponds to fringe benefits available to each of the proposed labor categories and are consistent with the offeror's established benefits package.

B. Whether the offeror's FICA and unemployment insurance are applied only up to the maximum salary limits established by statute, if any.

Indirect Costs – Indirect costs are costs that cannot be charged to a project specific activity. Indirect costs often include office space, equipment depreciation, and personnel costs for clerical pools, executive salaries, and administrative support. Each organization determines the costs it will include in its indirect cost pool, and the organization must treat the costs the same if the circumstances are alike. Indirect costs are allocated to the particular contracts based on a fair method of approximation, generally a percentage of a specific set of direct costs under the contract. Indirect costs are also referred to as overhead or burden costs.

Indirect costs should be logically grouped and compared to some part or all of the organization's direct costs (the base). The most popular base is direct labor; however, there are instances where an equitable allocation cannot be made using this base.

Example:

Category	Rate	x	Direct Labor Base	=	Cost
Indirect Cost	50%		\$71,000		\$35,000
Total Indirect Cost					\$35,000

Consider:

- A. Whether the allocation base is an equitable basis for distribution.
- B. The proposed overhead rate to ensure it is the same as that used for the offer's other contracts.

Travel and per Diem Costs – Travel costs include transportation, per diem or subsistence, and other reasonable travel related items directly related to the contract.

Example:

Transportation	Number of Miles		Rate per Mile	=	Amount
POV Office to job site and return	50	x	\$.30	=	\$15.00
POV Office to EPA and return	20	x	.30	=	\$6.00
Transportation	Origin		Dest		
Flight to attend contract related meeting	Dallas		Waco		\$210.00
Per Diem	Number of Days		Rate per Day		
	10	x	\$75.00	=	\$750.00
Total Travel and Per Diem Cost					\$991.00

Consider:

- A. Whether the proposed travel is necessary to complete the contract.
- B. Whether all people traveling on a trip are necessary.
- C. The cost per trip.
- D. Whether the per diem or subsistence allowance is the same for other travel by the offeror's personnel.

Supply, Material and Equipment Costs – Offerors will often have costs for supplies, material, and equipment (items with an acquisition cost of \$5,000 or more), material, and supplies directly related to the contract.

Example:

Item	Quantity		Cost per Item		Cost
Recording Barometers	5	x	\$ 455	=	\$ 2,275
Wind Turbine Generator	1	x	6,370	=	6,370
Incremental Water Quality Samplers	5	x	1,600	=	8,000
Aluminum Tubing	1500 ft.	x	.70 ft.	=	1,050
Miscellaneous Supplies					2,105
Total Equipment, Materials, Supply Cost					\$19,800

Consider:

- A. Whether the proposed equipment (items with a unit acquisition cost of \$5,000 or more) is needed to complete the contract.
- B. Whether it would be better to lease or rent the equipment as opposed to purchasing it.

- C. Whether proposed materials and supplies are needed and the cost appears reasonable.

Subcontract Costs – Subcontracts are contracts awarded by your contractor.

Example:

	Price				
Total Subcontract Costs (Should be broken down among categories if subcontract exceeds \$100,000.)	\$100,000				
Profit	10,000				
Total Cost					\$110,000

Consider:

- A. The procedures for cost review of subcontracts in excess of \$100,000 are the same as for a prime contract, so you will need detailed cost information.
- B. For subcontracts of \$100,000 or less, you may conduct an abbreviated review, evaluating only the cost and profit of each subcontract. (Profit for offerors and subcontractors should be evaluated based on the profit section below.)

Profit – Profit is the amount paid to a contractor above the total cost of the contract.

You should ensure that contractors of negotiated contracts are paid only fair and reasonable profits. There are no hard and fast rules to use when reviewing the amounts of profit.

Example:

	Price				
Total Direct & Indirect Costs	\$100,000				
Profit	10,000				
Total Cost					\$110,000

Consider:

- A. The offeror’s risk. Generally, the greater the risk the contractor assumes, the higher the rate of profit. Contractors assume greater risks on fixed-price contracts involving complex or difficult tasks as opposed to cost reimbursement contracts.
- B. Profits may also be higher if the contractor incurs significant capital costs, exercises considerable ingenuity, or does independent developmental work.
- C. Percentage of construction cost and cost plus a percentage cost contracts provide an incentive for the contractor to increase costs in order to increase profit. These contract types must not be used.

Cost Review Findings

After you complete a cost review, you must determine whether the proposed contract cost is reasonable. If the individual items are reasonable, the total cost is reasonable. You should award the contract.

A. If you find an individual cost is not reasonable, you should discuss the cost with the contractor. If, based on the contractor's justification, you and the contractor reach agreement that the cost is reasonable, accept the cost. If you and the contractor agree the cost is excessive, negotiate a reduction to a reasonable amount and accept the cost.

B. If you cannot agree with the contractor concerning the reasonableness of proposed costs, reject that contractor's offer. If the next best offer meets your requirements, you should review proposed cost information for that contractor. Follow the same review and negotiation process as above for the new contractor's proposed costs.

Documentation

Document all actions in conducting each price or cost review. Ensure all price and cost reviews are described and retained in your records in accordance with your record retention requirements or EPA's.

CONTRACT PROVISIONS

You must ensure your contracts are sound and complete and comply with applicable state and local law. Your contracts must also reflect the provisions required by federal law and EPA regulations listed below (40 CFR 30.48). To the extent these requirements are met by provisions in your standard contracts, they need not be repeated.

1. **Remedies** – Contracts in excess of \$100,000 must include administrative, contractual, and legal remedies for use in cases in which contractors violate or breach contract terms. The contract must also make clear the remedial actions which you may take.
2. **Termination** – Contracts in excess of \$100,000 must explain the conditions under which you may terminate them for your convenience, in event of a contractor’s failure, or in event of event beyond the control of the contractor; the process for bringing about the termination; and the basis for settlement.
3. **Equal Employment Opportunity** – Construction contracts in excess of \$10,000 must require compliance with Executive Order 11246, “Equal Employment Opportunity,” as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

You can find information on Equal Employment Opportunity in the Department of Labor web site at:

http://library.dol.gov/dol/compliance/comp_eeo.htm

4. **Copeland “Anti-Kickback” Act** (18 U.S.C. 874 and 40 U.S.C. 276c) – Construction contracts which exceed \$100,000 must require compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in

Part by Loans or Grants from the United States”). The Act prohibits contractors from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

You can find information on the Copeland “Anti-Kickback” Act on the Department of Labor web site at:

http://www.dol.gov/dol/compliance/comp_copeland.htm

5. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) – Some EPA grant authorizations require construction contracts awarded under EPA grants which exceed \$2000 to require compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7), as supplemented by Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under this Act, contractors must pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must pay wages not less than once a week.

You can find information related to the Davis-Bacon Act, including prevailing wage rates, on the Department of Labor web site at:

http://www.dol.gov/dol/compliance/comp_dbra.htm

6. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) – (a) Construction contracts which exceed \$100,000 or other contracts that involve the employment of mechanics or laborers which exceed \$2,500 must require compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor must compute the wages of every mechanic and laborer on the basis of a standard 40-hour workweek. If a mechanic or laborer works more than 40 hours in a week, the contractor must pay the worker at a rate of not less than one and ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

(b) Construction contracts which exceed \$100,000 must provide that no laborer or mechanic may be required to work in surroundings or under

working conditions which are unsanitary, hazardous or dangerous. (This requirement does not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.)

You can find information on the Contract Work Hours and Safety Standards Act on the Department of Labor web site at:

[Selecting DBA Wage Decisions](#)

7. **Rights to Inventions** – Experimental, developmental, or research work contracts must provide for both your and EPA’s rights in any resulting invention (see 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements”).

8. **Access to Records** – Negotiated contracts which exceed \$100,000 must allow you, EPA, the Comptroller General of the United States, or any of their duly authorized representatives, access to any books, documents, papers and records of the contractor directly pertinent to your contract for the purpose of making audits, examinations, excerpts and transcriptions (40 CFR 30.48(d)).

9. **Debarment and Suspension** – Contracts which exceed \$100,000 must prohibit contractors from awarding subcontracts to persons (individuals or organizations) listed on the Excluded Parties Listing System (EPLS) which is found at:

<http://www.epls.gov/>.

The list contains the names of persons debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees. (See Appendix A, 8.)

10. **Energy and Environmental Conservation.** – Contracts must require contractors to give preference, to the extent practicable and economically

feasible, to products and services that conserve natural resources and protect the environment and are energy efficient (30.44(a)(3)(vi)).

11. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) – Contractors who apply or bid for an contract of more than \$100,000 must file a certification that it will not and has not used Federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining your grant. The contract must also require that any subcontractor who applies or bids for subcontract in excess of \$100,000 must provide a similar certification to the next higher tier contractor or subcontractor. Contractor and subcontractors must also disclose any lobbying with non-Federal funds in connection with obtaining the grant. Each contractor or subcontractor must forward any disclosures from tier to tier up to the recipient.

CONSTRUCTION CONTRACT BONDS

You must ensure EPA's interest in construction or facility improvement contracts under grants is adequately protected. You must at least meet the following minimum standards ([40 CFR 30.48\(c\)](#)):

- You may follow your organization's requirements relating to bid guarantees, performance bonds, and payment bonds for construction contracts or subcontracts for \$100,000 or less.
- For contracts or subcontracts exceeding \$100,000, EPA may accept the bonding policy and requirements of the recipient, provided EPA determines that the Federal Government's interest is adequately protected.
- If EPA does not determine the Federal Government's interest is adequately protected, you must assure construction contracts provide:
 - ▶ A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
 - ▶ A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
 - ▶ A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

When you must require bonds, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR 223, “Surety Companies Doing Business with the United States.”