

# Federal Procurement Basics for 319

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This presentation is not intended and should not be interpreted as, representing  
the position or policy of EPA on matters discussed.*

# Procurement Basics

Two main things when we talk about procurement:

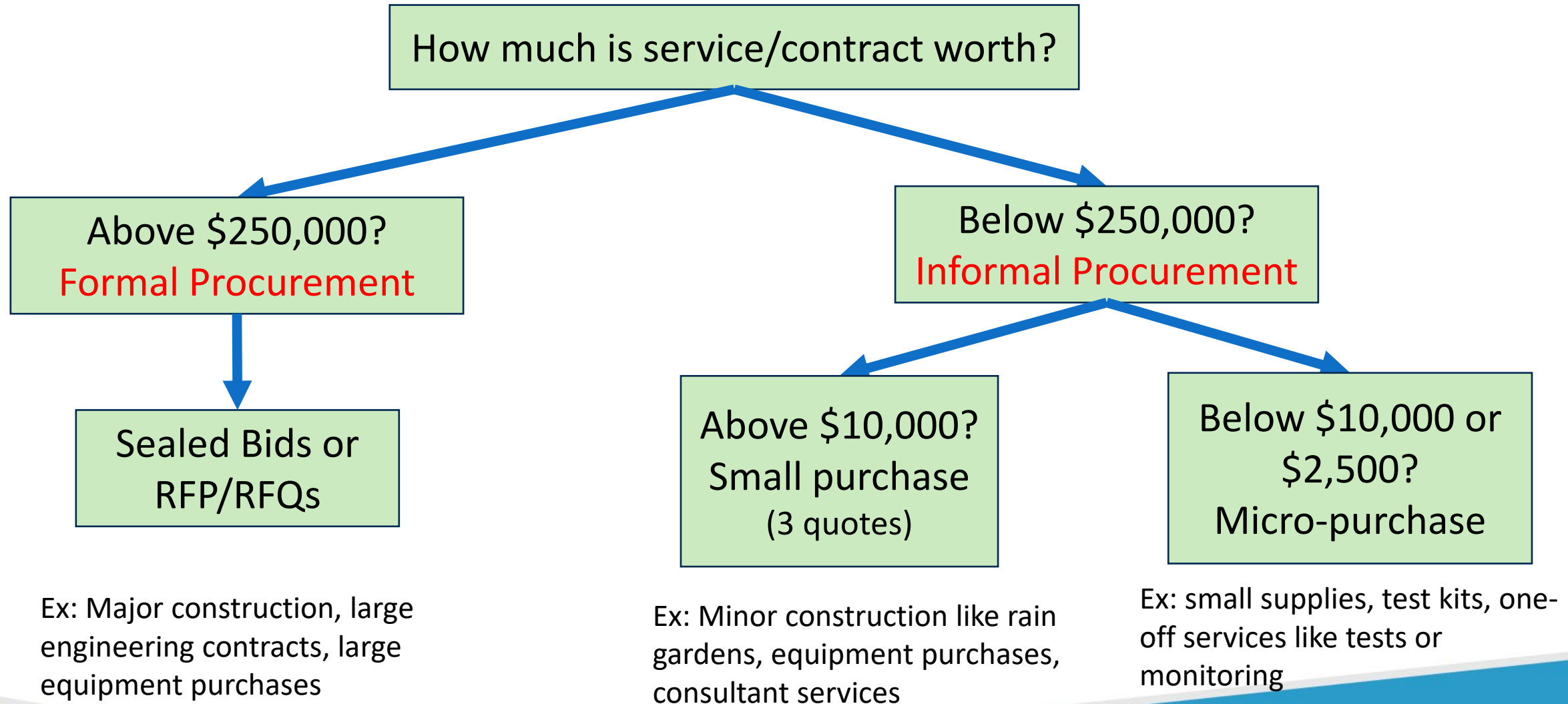
- Competition – was it fair and open to the public
- DBE – 6 good faith efforts need to be followed

# Procurement Basics

## Competition

- Federal Procurement must be fair and open for public competition. In most high-dollar cases this means a bidding process.
- This generally means a solicitation must be open for at least 30 days and be publicized in a way that can reach prospective bidders (newspaper, websites, trade publications, etc.)
- The rules for the competition must be clearly spelled out prior to opening the solicitation – eg. the evaluation criteria, end date, etc
- Recipients must also follow state/local laws and have clearly defined procedures for soliciting or procuring goods/services

# Types of Procurement



# Types of Procurement

**Informal procurement** – when the goods/services to be procured are below the Simplified Acquisition Threshold (SAT) = \$250,000.

- Micro Purchase – purchase of supplies/services that (in the aggregate) does not exceed \$10k, or \$2.5k for services subject to Service Contract Labor Standards (i.e. construction).
  - Think boots, office supplies, things you can put on a purchase card
- Small Purchase – purchase of supplies/services that are between the micro threshold and the SAT (between \$10k – \$250k)
  - Think group purchases of small items (80+ people x \$150 each = \$12k)
  - Prices and quotes must be obtained from at least 3 sources and lowest option is selected (or the higher cost item is justified)

# Types of Procurement

**Formal procurement** – this is used when the goods/services to be procured are above \$250k. This requires public advertisement

- Sealed Bids – this process is most common for larger construction situations. Winning bid is the lowest cost, responsible bidder
- Request for Proposals/Qualifications (RFPs/RFQs) – this process is used when recipients don't know what services they need or how much they will cost. Can also be used when they need to evaluate the most competent provider. Typically involve negotiating costs with the winning proposal.

# Types of Procurement

## Sealed Bids

- Bids are in sealed envelopes, for a firm, fixed price contract (i.e. lump sum or unit price)
- Winning bid is awarded to the lowest, responsible bidder conforming to all requirements in the solicitation
  - Announcement must be realistic, complete, and have an adequate purchase description (Ex. Installation of 25 bikeshare stations located throughout the City with an option to install up to 10 additional stations)
  - Two or more bidders must submit
  - The work being done must lend itself to a firm, fixed price

# Types of Procurement

## Sealed Bids

- Solicitation period must be open to the public and distributed widely
- Solicitation must include any specifications, attachments, and define items/services to be procured
- All bids get opened publicly at a time and place listed in the advertisement
- Winning bid goes to the lowest responsive (i.e. bid package meets the needs) and responsive bidder (i.e. answered the solicitation correctly)
- Bids may be rejected if a sound reason is documented
- Discounts must be excluded if not available to the general public



# Types of Procurement

## RFPs/RFQs (aka proposals)

- Generally used when conditions are not appropriate for sealed bids
- Must still be publicly advertised and must receive an adequate number of qualified offerers
- Must have a method of conducting technical evaluations (i.e. scoring sheet, interviews, etc.)
- Contracts must be award to the responsible offeror whose proposal is most advantageous to the recipient, with price and other factors considered
- May be used in consideration of A/E services (“Brooks Act”). In this case price must be ignored completely

# A/E Procurement – aka Brooks Act

For certain projects/programs – recipients must comply with A/E procurement

- A/E – Architectural/Engineering services
- This process prioritizes competency over lowest bidder and follows the RFP/RFQ process. Price is not allowed to be a consideration!
- The winning proposal may not be the lowest bidder
- Only real guidance is [40 U.S.C. 1101](#)

# Other Requirements

- Cost price analysis – needed for any action above the \$250k threshold
  - Must estimate the costs before soliciting, evaluate the reasonableness of bids/proposals, and follow state/local/org procedures developed beforehand
- Contracts over \$250k must address legal remedies in case of breach; over \$10k must address termination for cause and convenience
- All contracts must have EEO clause, Suspension/Debarment, Anti-lobbying provisions, reporting CAA/CWA violations, recycled materials, prohibition of Chinese telecoms, domestic preference of materials (separate from BABA), rights to inventions
- Davis-Bacon wages apply to all construction contracts over \$2k
- Consultant cap - \$93.53/hr, \$728.24/day (2025) for single person consultants or contract employees

# Procurement no-no's

There are several practices that are universally not allowed:

Restriction	Example
Imposing unreasonable restriction on firms that are allowed to submit a proposal	Requiring a donation to a local club
Requiring unnecessary experience or bonding	"20 years of experience working in our town"
Allowing noncompetitive pricing practices between firms	Bidder is receiving a discount not available to other bidders
Making noncompetitive awards to consultants on retainer	Local government has an engineering contract and assigns work as it comes in
Conflict of interests or arbitrary actions	Board awards management contract to board member's company
Specifying brand name products	"Must use Sherwin-Williams Real Red SW-6868"

# Types of Procurement – sole source

Sole Source (aka Noncompetitive Procurement) – There are 5 specific situations where sole source procurement is allowed:

1. Where the aggregate amount of property/services is less than the micro-purchase threshold
2. Where an item is only available from a single source
3. Public exigency or emergency will not permit a delay from publicizing a competitive solicitation
4. The Federal awarding agency (EPA) expressly authorizes it
5. After solicitation, competition is determined to be inadequate

#2, 3, and 4 need to be approved ahead of time!!

# DBEs

DBEs – Disadvantaged Business Enterprises – includes Minority Owned Businesses (MBEs) and Women Owned Businesses (WBEs)

- All procurement must follow the 6 good faith efforts:
  1. Ensure DBEs are aware of the contracting opportunity
  2. Make info on opportunities available to DBEs and arrange timeframes for contracts and establish delivery schedules in a way that encourages participation (i.e. publish for 30 days)
  3. During the contracting process, consider whether firms competing for large contracts could subcontract with DBEs
  4. Encourage contracting with a consortium of DBEs when a contract is large enough
  5. Use the services and assistance of the Small Business Administration and Minority Business Development Agency (Dept of Commerce)
  6. If the prime awards subs, require the prime to take steps in 1-5
- The 6 good faith efforts apply regardless of dollar amount or items/ services to be procured

# Documentation

All EPA grantees are required to have documented procurement procedures

Recipients are also required to keep records documenting actions of each procurement action. Things like:

- A cost estimate and selection of contract type
- Solicitation advertisement or justification for sole source
- Determination that price is reasonable and acceptance
- Final contract and amendments
- Good faith efforts for DBE

# Resources

- 2 CFR 200.317-327 – Regulations concerning federal procurement - <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200#subject-group-ECFR45ddd4419ad436d>
- Appendix II of 2 CFR 200 – Required Contract Provisions - <https://www.ecfr.gov/current/title-2/part-200/appendix-Appendix-II-to-Part-200>
- EPA's Best Practice Guide for Procuring Services, Supplies, and Equipment - <https://www.epa.gov/sites/default/files/2021-03/documents/best-practice-guide-for-procuring-services-supplies-equipment.pdf>
- Your program contact!

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