



# Introduction to Brownfields Procurement for Tribal Communities



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# Agenda

1. What is Procurement?
2. Why Procurement Matters in Brownfields Redevelopment
3. Procurement and Tribal Sovereignty
4. The Lifecycle of Procurement in a Brownfields Project
5. Common Questions and Pitfalls
6. Activity

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# **What is Procurement?**

# Definition

- The process of obtaining goods, services, or works from an outside source
- Involves planning, solicitation, evaluation, and contracting
- Must follow Tribal law & federal requirements (2 CFR 200)

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# **Why Procurement Matters in Brownfields Redevelopment**

# Fair Competition

- *Level playing field:* A clear procurement process ensures that all qualified contractors and vendors — Tribal, Native-owned, and non-Native alike — have a fair shot.
- *Avoiding favoritism and disputes:* Transparent rules prevent challenges or mistrust from community members or outside agencies.
- *Encouraging quality:* Competition pushes vendors to put forward their best pricing, staff, and approaches.



# Transparency

- *Protecting trust:* A transparent process reinforces accountability to the community, Tribal leadership, and federal funders.
- *Open record of decisions:* Written documentation (RFPs, evaluation criteria, scoring sheets) shows how decisions were made and protects Tribes in case of audits or disputes.
- *Cultural alignment:* Transparency helps demonstrate that redevelopment is being done with integrity and in line with Tribal values.





# Maximizing Resources

- *Stretching limited funds:* Brownfields redevelopment often relies on a patchwork of grants and Tribal dollars. Smart procurement ensures the Tribe gets the most value for every dollar spent.
- *Better services, better outcomes:* Well-structured procurement brings in vendors who understand environmental, cultural, and community needs — not just the lowest bidder.
- *Leveraging partnerships:* Tribes can use procurement to require match contributions, community benefits, or partnerships that expand project impact.



# Building Tribal Capacity

- *Skills transfer:* Procurement can be designed to include training, mentorship, or joint ventures that leave knowledge within the Tribe.
- *Growing Native-owned businesses:* Giving preference or scoring weight to Native-owned firms supports the long-term growth of Tribal economies.
- *Institutional strengthening:* Each procurement process helps refine Tribal policies, staff experience, and systems — creating stronger capacity for future projects beyond brownfields.



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# **Procurement and Tribal Sovereignty**

# Reinforcing Self-Determination

- Tribes can design procurement policies that reflect their unique priorities rather than defaulting to outside templates.
- By setting their own evaluation criteria (e.g., local hire, Native-owned businesses, cultural sensitivity), Tribes determine who does the work and how it's done.

# Protecting Tribal Interests

- Procurement choices safeguard cultural resources, natural resources, and community health.
- Transparent and well-structured procurement helps prevent exploitation or contracts that don't serve long-term community goals.



# Balancing Federal Requirements and Tribal Law

- Brownfields funding requires compliance with [2 CFR Part 200](#), [2 CFR Part 1500](#), [40 CFR Part 33](#) and any other applicable federal rules. [Brownfields Grants: Guidance on Competitively Procuring a Contractor](#)
- Strong Tribal procurement policies ensure federal compliance while protecting sovereignty, so outside agencies and contractors respect Tribal law, traditions, and decision-making processes.



**Brownfields Grants: Guidance on  
Competitively Procuring a Contractor**

# Economic Empowerment & Nation Building

- Procurement can be a driver of economic development:
  - Prioritizing Native-owned contractors and firms.
  - Creating opportunities for workforce development.
  - Building Tribal capacity to manage future projects independently.
- This ties redevelopment directly to community wealth building instead of outside profit.



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# **The Lifecycle of Procurement in A Brownfields Project**

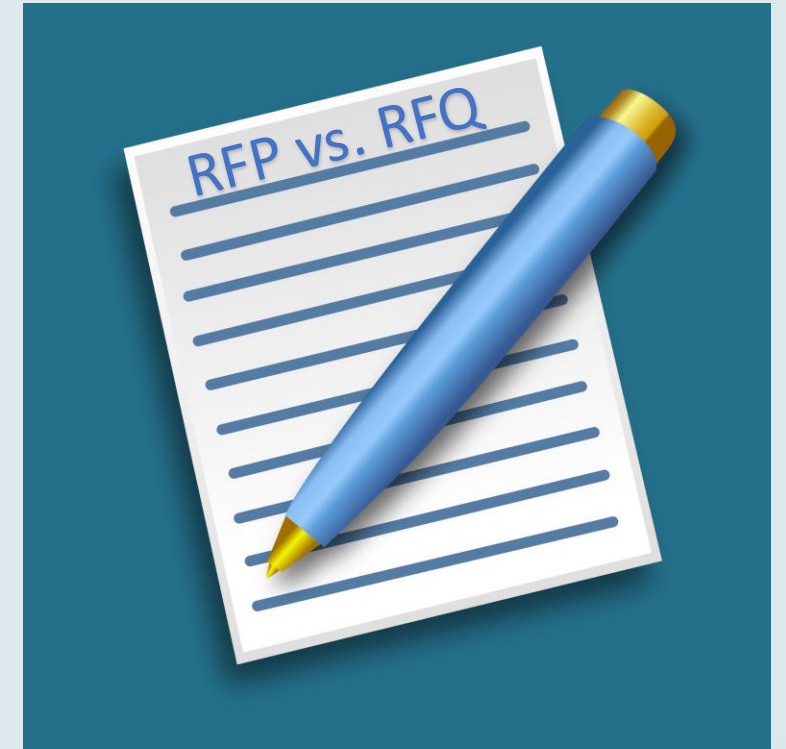


# Defining the Scope of Work

- *Why it matters:* The scope drives everything — if it's too vague, costs balloon; if it's too rigid, opportunities are missed.
- *Brownfields angle:* Scopes often involve highly technical work (Phase I/II ESAs, remediation, demolition, reuse planning) and must reflect both environmental regulations and Tribal priorities (e.g., protecting cultural sites, workforce participation).
- *Tribal sovereignty connection:* The Tribe decides *what's important to include* beyond federal minimums.

# Writing an RFP/RFQ

- *RFP (Request for Proposals)*: When you want vendors to propose an approach, not just qualifications.
- *RFQ (Request for Qualifications)*: When you want to select based on expertise first, then negotiate scope/price.
- *Single Source*: Non-competitive procurement may apply when item/service is only available from a single source (i.e., copyright).
- *Brownfields tip*: Use RFPs for services like cleanup contractors; RFQs for professional services like engineers or environmental consultants.
- *Key Tribal choice*: Include evaluation criteria such as Native-owned firm preference, local hiring, or cultural training.



# Evaluation & Selection

- *Process*: Score proposals based on pre-set criteria (technical expertise, cost, past performance, cultural competency).
- *Tools*: Use a scoring matrix to document decisions — protects fairness and transparency.
- *Brownfields angle*: Sometimes the “lowest bidder” isn’t the most responsible bidder. Contractor experience and past performance related to safety and compliance can impact selection.
- *Tribal sovereignty*: Evaluation criteria can reflect community values, not just cost.
- *Contractor eligibility*: Ensure the contractor is not suspended or debarred.

# Contracting

- *Essentials:* Contracts should clearly define deliverables, timelines, payment terms, compliance requirements, and reasons for termination.
- *Brownfields specifics:* Ensure contracts reference federal requirements tied to funding (EPA Brownfields, HUD, DOT, etc.).
- *Tribal protection:* Include clauses for protecting Tribal resources, confidentiality, dispute resolution under Tribal law, and cultural heritage safeguards.



# Oversight & Compliance

- *Why it matters:* Procurement doesn't end when the contract is signed. Oversight ensures the contractor performs as promised and follows all rules.
- *Brownfields compliance issues:*
  - Davis-Bacon Act (prevailing wages on construction/cleanup).
  - Build America, Buy American (BABA) requirements for certain federally funded materials.
  - Environmental safety standards (OSHA, EPA regs).
- *Tribal role:* Oversight is a chance to monitor quality, enforce cultural protections, and build staff knowledge by working alongside contractors.

# Federal Requirements and Tribal Procurement Policies

- *Federal overlay:* 2 CFR 200 requires non-federal entities (including Tribes) to use procurement processes that are transparent, competitive, and well-documented.
- *Tribal law integration:* Tribes can adopt their own procurement codes that *meet or exceed* these federal requirements.
- *Balance point:* Federal rules set the minimum; Tribal sovereignty allows customizing the process to reflect cultural, economic, and community priorities.
- *Example:* A Tribal procurement policy might require that at least 20% of evaluation points go to Native-owned firms, as long as competition is preserved.

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# **Common Questions & Pitfalls**



# Avoid Procurement Pitfalls

- *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.
- *Avoid Unfair Competitive Advantages:*
  - 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.
  - Do not use sample language or templates from contractors planning to bid on the services
  - Imposing unreasonable competition requirements that are overly narrow creating a situation only one firm can meet.
  - Discouraging other contractors from submitting an offer by naming firms.
- *Maintain open and transparent communication:* Questions should be answered in a publicly available forum accessible by all interested parties.



# DBE Participation

- Disadvantaged Business Enterprises (DBE) includes Minority Business Enterprises (MBE) and Women's Business Enterprises (WBE)
- *Make a Good Faith Effort*: 40 CFR Part 33 provides regulations related to DBE participation in EPA programs.
  - Checking with the Small Business Administration, Department of Transportation, or the state in which your organization intends to do business to find DBEs.
  - Publicly advertise RFPs/RFQs.
  - Keep the bidding period open for **at least 30 days** for full and open competition.
  - [40 CFR 33.301](#) describes the six good faith efforts.
- According to [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.”

# Cost Reasonableness

- *Pricing Evaluation:*
  - Evaluate cost proposals alongside all other evaluation criteria.
  - Evaluate only the top two or more scoring proposals. Cost proposals may be submitted separate from the rest of the proposal.
  - EPA recommends that the cost/price reasonableness criterion is weighted at least 25%.
- *Document the Decision-making Process:* 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](#)
  - Utilize a scoring rubric.
  - Maintain records sufficient to detail the history of each procurement transaction. These records must include the rationale for the procurement method, contract type selection, contractor selection or rejection, and the basis for the contract price.

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# **Activity: Practice RFP Development**

# Activity Instructions

- *Objective:* Provide participants hands-on experience drafting key elements of a procurement document for brownfield projects, with a focus on Tribal priorities, sovereignty, and community engagement.
- *Instructions:*
  - Form small groups of 3–5 participants.
  - Review mock scenario.
  - Using the template, identify and draft:
    - Key requirements: Clear expectations for contractors, including technical skills, certifications, or experience with Tribal lands.
    - Selection criteria: Factors for evaluating proposals, such as past experience with Tribal communities, cultural competency, cost, and schedule.
    - Special Tribal/community considerations: Examples include prioritizing Tribal-owned businesses, ensuring meaningful community engagement, protecting sacred sites, and aligning with Tribal environmental codes.

# Report Back

## Discussion and Key Take-aways

- *Scenario 1:* Phase I Environmental Site Assessment (ESA)
- *Scenario 2:* Brownfields Cleanup Contractor
- *Scenario 3:* Reuse Feasibility Study
- *Scenario 4:* Multi-phase Redevelopment Project Reuse Feasibility Study



# Thank You

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