



Tier II: Module 4

CERCLA 128(a)

Tribal Response Program

Contracting



How do I contract for TRP services?



Can you put out a "contract" on the cat?



TRP Contracting

It is often necessary to procure or “hire” a person or firm to perform certain TRP tasks, services or duties for the tribe. These can include:

- conducting ASTM Environmental Site Assessments,
- remediation or cleanup of contaminated sites,
- drafting tribal codes, laws or policies,
- establishing and maintaining web sites
- Reviewing reports and data
- conducting a risk assessment
- etc.





Federal Laws & Regs.

- Funding authorized under CERCLA Section 128(a) is awarded through a cooperative agreement (grant) with a tribe/native village.
- All contracts for procurements of goods and services utilizing federal grant funds by a Tribe are subject to the requirements of **40 CFR PART 31**—*Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.*



Specifically 40 CFR §31.36

These requirements include:

- Grantee will follow the same policies and procedures it uses for procurements from its non-Federal funds.
- Grantee will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations.
- Grantee will use their own procurement procedures which reflect applicable tribal laws and regulations, provided that the procurements conform to applicable federal law, the standards identified in this section, and if applicable, §31.38 of the Indian Self Determination Act .
- Grantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.



40 CFR §31.36 (cont.)

- Grantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts.
- No employee, officer or agent of the grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

{Such a conflict would arise when the employee, officer or agent, any member of his immediate family, his or her partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.}



Indian Self Determination Act

40 CFR § 31.38 of the ISDA states that any contract, subcontract, or sub-grant awarded under an EPA grant by an Indian Tribe or Indian Intertribal Consortium shall require to the extent feasible:

- (a) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians as defined in the Indian Self Determination Act (25 U.S.C. 450b); and
- (b) Preference in the award of subcontracts and sub-grants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77) [25 U.S.C. 1452].



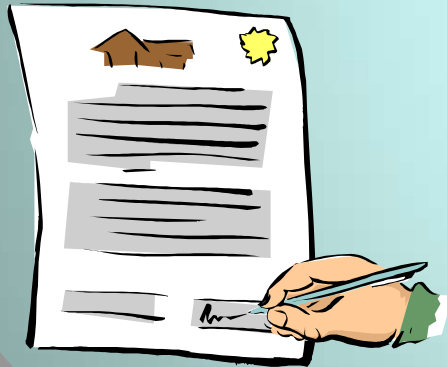
Required Wording

When using 128(a) grant funds, in whole or part, for a contract the U.S. EPA may also require and/or recommend that specific wording and/or forms be included in or attached to contracts when using federal funds.

{Contact your Regional grant project manager for the latest requirements.}



General Contracting Guidance



Will I get a
new dog
house in this
deal?



Pre-contract

First, decide whether you need to contract out a project, or all of the project tasks. what tasks can be done “in-house”?

- **Use contractor to enhance TRP capacity.** work closely with the contractor so it can be a learning experience.
- **Get familiar with the procurement requirements.** Know the contracting policies and requirements of your Tribe and 40 CFR Part 31. (when is sole-source OK?)



Contracting Process

The process of hiring a person or contractor generally involves:

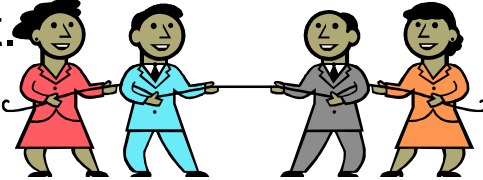
- issuing a Request for Proposals (RFP);
- selection of a contractor from the proposals;
- negotiating the contract terms and costs;
- performance of the work, services or tasks by the contractor; and
- final close out and payment of the contract.



RFP

- **Put as much detail as possible in your RFP and request specific unit costs or cost types.**
 - ✓ you do not want to compare apples and oranges.
 - ✓ If you want a certain level of experience, including working with tribes, say so in the RFP.
- **Avoid even the appearance of conflict of interest.**

Be sure no-one on your selection committee or the contract team has a conflict of interest.

An illustration of four people (two men and two women) standing in a circle and holding hands. They are dressed in professional attire: a red dress, a light blue suit, a grey suit, and an orange dress. This image is placed between the text "has a conflict of interest." and the next bullet point.
 - **Make sure your selection process is clear and fair.**

Selection criteria and their relative importance should be in the RFP.



Prepare for RFP

- **Estimate time-line from RFP to start of work.**

The process to complete contracting can take awhile and you may need work to start by a certain date or season.



- **Consult other tribes and the EPA on the Request for Proposal (RFP) format.** Their experience will help you avoid problems.





Request for Proposal (RFP)

A solicitation for proposals from contractors should include at a minimum:

- General information about the project or assignment
- Scope of Work statement
- Specific activities or tasks that applicants must address in their proposal
- Due date for proposal submission
- The expected performance period (dates) or time frame(s)



Request for Proposal (RFP)

(cont.)

- Expected work products and format(s)
- What the proposal evaluation criteria will be and the relative weight of each criteria
- Contact person
- Ability to visit site(s) or review past reports before making a bid
- Any recommended or required U.S. EPA language (*when using U.S. EPA grant funds*)



Notice of RFP

The full detailed RFP can be lengthy and therefore expensive to publish in newspapers. Therefore, it is a common practice to publish a much shorter “Notice of Availability” (NoA) of the RFP. Interested applicants can then request a full copy of the RFP via mail, E:mail, fax or in person.



Notice of RFP

- The RFP or NoA should be published in appropriate sources such as newspapers of local or area circulation; web sites; trade journals; newsletters, etc. to include at least three regional daily newspapers.



{Examples of RFPs and NoAs for site assessment and remediation/cleanup can be obtained from the US EPA or another Tribe.}



Rank & Interview

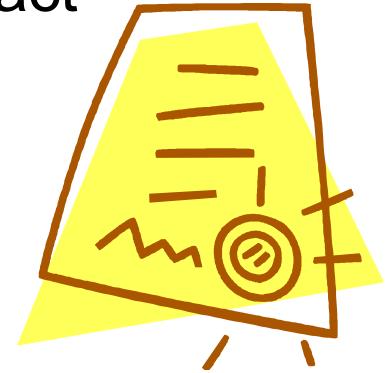
- **Interview the top-rated applicants.** Develop a list of questions and ask the same questions during each interview (Note: You can negotiate final fees and costs during final contract negotiations with the selected applicant.)





Contract Wording

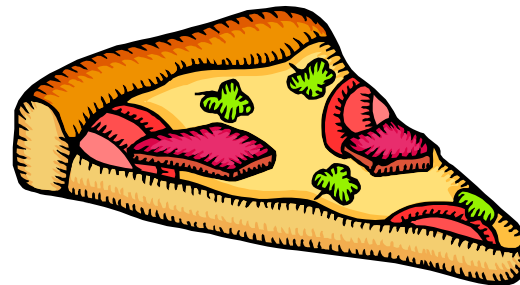
- Some tribes have a general or model contract that is recommended, or in some cases is required, to be used by the tribal programs for procurement of services.
- Typically such contracts do not include the necessary requirements or flexibility for conducting TRP activities, especially assessments or remediation/cleanup of sites. The TRP may need to work with the tribal contracting office and/or the tribal legal staff to agree on contract language that is appropriate and acceptable to all tribal parties.





Pre-contract planning

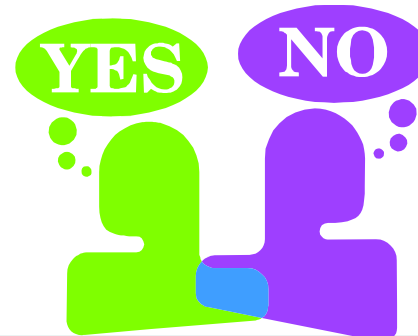
- **Work with your tribal contracting office to develop your contract.** Be sure they understand that your grant requires that certain federal requirements as well as technical standards and requirements be included.





Contract Wording

- The contractor may propose that the TRP utilize their contract. The tribe may take the contractor's preferred contract terms or language into consideration in the negotiation of a contract but the tribe is under no obligation to use the contractor's contract.





Contract Requirements

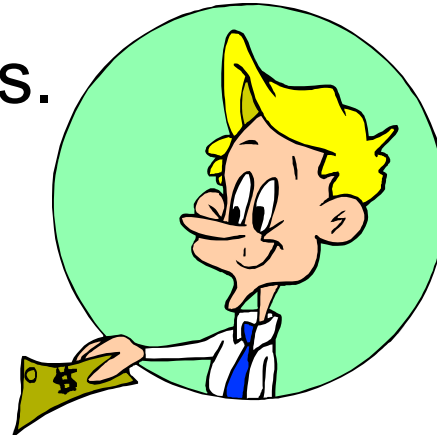
- **Include specifics on work products and performance standards.**
- ✓ Be sure to clearly specify the number, final form and formats of reports and other documents.
- ✓ For remediation/cleanups you may need to specify performance or cleanup standards to be met.





Contract Requirements

- **Establish conditions for final payment.** It may be appropriate to reserve a percentage of the total contract fee to be paid upon final review, verification and approval of the contractor work products or accomplishment of remediation/cleanup goals.





How to halt work?

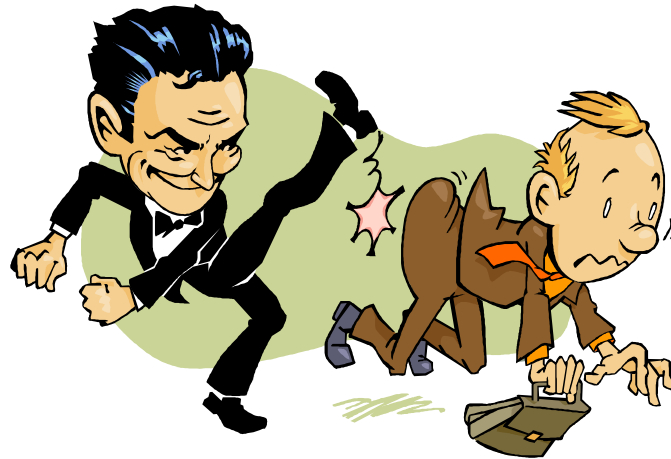
- Discuss “stop work” issues and make sure the contractor understands the process and has all local contact information. Also make sure your contractor knows that any subcontractors are subject to the same contract and tribal/federal requirements as the prime contractor.





Contract Termination

Be sure that the contract has provisions for early termination of the contract, including termination for cause, such as inadequate performance. Consult your tribal attorney and/or contracting office for guidance on this.





Implementation & Oversight

Have a kick-off meeting with your contractor, environmental director and project team.

- Make sure the overall goals of the project, schedule (especially critical deadlines), tasks, form and format of final products/deliverables, and roles and responsibilities are clear and understood.

{Note: understand the cost of meetings with the contractor}





Implementation & Oversight

- ✓ The TRP project manager is responsible for keeping the project and the contractor on track.



- ✓ Contractors need your input to do a good job!



Implementation & Oversight

- **Require your contractor to keep you informed on a regular basis about progress.** Progress reports should be provided to you on a quarterly basis or more often as appropriate. These reports should include, at a minimum, the work performed, any obstacles encountered to completing the work on-schedule, plans for the coming period, costs incurred and budget remaining.





Implementation & Oversight

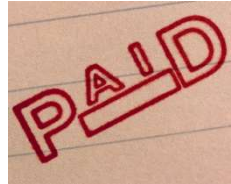
- **Get adequate documentation of costs** (names, hours and costs for staff time, detailed expense breakout for supplies, travel, subcontracts, and other items).





Implementation & Oversight

- **Process your contractor's requests for reimbursement promptly.** If there are problems with their request, let the contractor know and try to get the problems resolved.



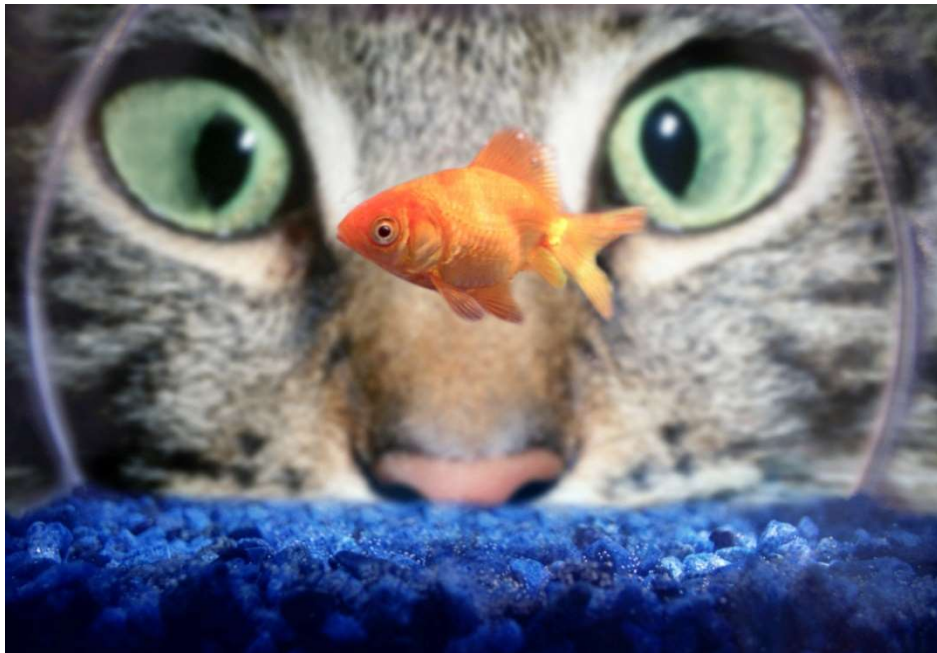
- **Keep track of progress and budget.** Maintain regular contact with the contractor, respond to calls promptly, review draft and final reports, and make sure any tribal and/or EPA project officer reviews and approvals are sought and obtained as necessary.

{EPA may also need to receive a copy of reports or other documents completed under the contract and may review and comment on draft reports.}



Implementation & Oversight

- **Conduct frequent field oversight.** Have a tribal staff person in the field often to observe (and learn from) the contractor. Ask lots of questions, take lots of notes and take LOTS of pictures.





Implementation & Oversight

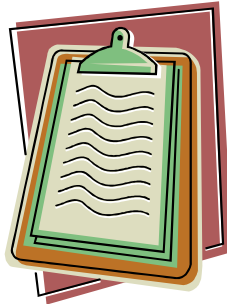
- **Don't let problems get out of hand.** If you find that contract provisions are not being met, the schedule is falling behind without explanation, un-anticipated problems are being encountered or the project looks like it is going over budget, arrange a meeting or call with your contractor and/or project manager to discuss issues and seek a resolution.





Implementation & Oversight

- **Document.** Document all meetings, correspondence and discussions with your contractor and other involved parties. Document information and pictures from field oversight. (This may be valuable information later if problems or differences arise or you want to tell the story of the project)

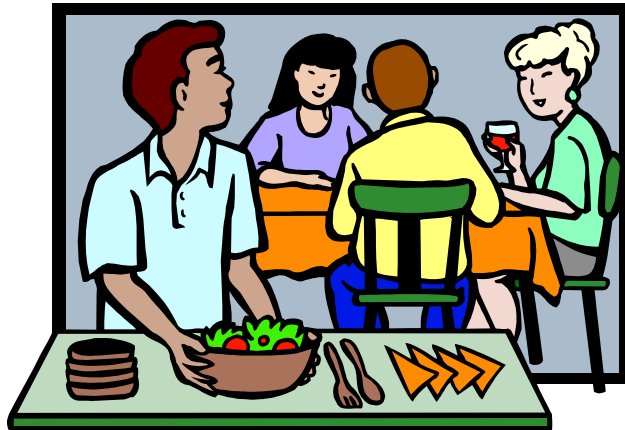


- **Review and verify.** Review all final work products to ensure they meet your needs and requirements and are signed/certified, if required, by the appropriate and qualified party.



This is Business!

Remember: This is a business relationship and you are contracting for professional services and results!





TRP Contracting Experiences

As tribes have begun to implement contracting of services for accomplishment of TRP actions and tasks they have often needed to improve and/or develop new tribal contracting processes to include:

- Developed Improved or new “model tribal contracts” specifically suited for TRP work and tasks.
- Conducted proposal review and selection process.
- Needed to amend or expand contract tasks or costs.
- Needed to terminate contractor services for failure to perform.
- Used contractors as a learning tool to improve program capacity.



Lessons Learned

- Have ability to address contingencies or “new discoveries”;
- Work with Tribal Attorney in advance to address ability to terminate contractor for cause;
- Consult references and other tribes that have utilized the contractor;
- Conduct field oversight of contractor (often);



Lessons Learned

- Ensure contract includes specific requirements for providing copies of all necessary reports and documents in appropriate quantity and format(s) (hard copy, bound, digital, digital format, etc.); and
- Start RFP and selection process early enough to make contractor selection and establish a start date before contractors are fully committed for other work, especially if the work is seasonal.



Lessons Learned

- Use contract that fits the work to be accomplished
- Establish weighted contractor selection criteria that:
 - ✓ fit the work/tasks;
 - ✓ includes a qualitative criteria;
 - ✓ favors experienced and qualified staff;
 - ✓ includes experience working with tribes;
 - ✓ meets the needs of the tribe; and
 - ✓ is not overly biased for the low bidder.



The End