

SLFRF Capital Expenditure Projects

This document describes the general process for SLFRF capital expenditures. While reflective of standard practice, this process is not inclusive of all review steps and agencies may add to these steps as needed.

Definitions

Capital Expenditure (CapEx)

Expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life ([2 CFR 200.1](#)). This includes projects that are funded by SLFRF funds. SLFRF capital expenditure projects can occur in expenditure categories 1, 2, 3, 5 and 6. The SLFRF Final Rule includes enumerated uses for ECs 1-3 and 5, and in some cases allows for independent justification of use of funds for capital expenditure outside of the enumerated uses in the Final Rule. Expenditure category 6 (Revenue Loss) allows extensive flexibility of SLFRF funds for capital expenditure projects. CapEx projects funded by EC 6 must still meet the criteria of government services.

For projects totaling more than \$1,000,000, a written justification is required describing the project need and why the capital expenditure is the best option to address that need. The justification should be maintained in the program/project files, but does not need to be submitted to the Treasury, unless it is for a non-enumerated “other” use.

For projects totaling more than \$10,000,000, there are a number of additional requirements. In addition to written justification for the project, extensive labor reporting is required. This includes certification of laborers and mechanics receiving prevailing wages or detailed information on the number of contractors and subcontractors working on the project, including wages by classification, comparison to prevailing wage and records to substantiate the information. Additionally, a certification regarding a project labor agreement (pre-hire collective bargaining) should be provided, or if not available, then a project workforce continuity plan is required.

Capital Construction

Capital Construction projects are CapEx projects on state-owned land and buildings that meet the CRS 24-30-1301 definition of Capital Construction. Most of these projects were appropriated in the Long Bill, and are funded with SLFRF Revenue Loss funds (EC 6). As with all capital construction by the State of Colorado, the Office of the State Architect (OSA) has statutory authority over these projects as described in CRS 24-30-1303 and related statutes.



Governing Regulations

Uniform Guidance (2 CFR 200)

All federal funds must be managed in accordance with 2 CFR 200 (Uniform Guidance). While all sections of 2 CFR 200 are required in managing federal funds, CapEx projects are addressed in [Subpart D: Post Federal Award Requirements](#), which addresses general program management, procurement standards and performance, financial and subrecipient monitoring. Uniform Guidance also requires specific contract provisions be included in non-federal entity contracts using federal funds.

SLFRF Award Terms and Conditions

In the case of SLFRF, the award terms and conditions associated with the grant funds are the [SLFRF Final Rule](#), [SLFRF Reporting and Compliance Guidelines](#), [SLFRF FAQs](#) and all other guidance issued by the US Treasury that defines eligibility and grant management requirements as they relate specifically to SLFRF spending. SLFRF award terms and conditions, as listed in the Final Rule and other guidance, define the parameters for allowable use for SFLRF funds.

Period of Performance: For all SLFRF projects, the Final Rule requires eligible costs to be incurred through contract, subaward or beneficiary award by the State by December 31, 2024 and all funds must be expended by December 31, 2026.

Written Approval: Uniform Guidance requires written approval from the federal awarding agency for all capital expenditures. In the case of SLFRF, the SLFRF Final Rule details allowable capital expenditures and serves as written approval from the federal awarding agency.

Allowable Use: The [SLFRF Final Rule and Reporting and Compliance Guidance](#) detail allowable uses of SLFRF funds. Eligible uses are detailed in both documents.

State Fiscal Rules

As with all funds distributed by the State of Colorado, SLFRF CapEx funds must be managed in accordance with State Fiscal Rules and/or all applicable State policies and procedures. This includes the Procurement Code, OSC Competition Requirements for Grants Policy, Technical Guidance and FAQs, and OSC Guide for Monitoring Subrecipients.

Office of the State Architect Guidance

The [Office of the State Architect](#) (OSA) is statutorily responsible for the administration of state funded planning, construction, energy conservation and real estate transactions at state agencies



and institutions of higher education. The Office of the State Architect is responsible only for state owned land and buildings.

- [OSA Contract](#) - This should be the basis of all capital construction contracts.
- [Supplemental General Conditions: Federal Provisions](#) - This document reflects the federal regulations that will apply to all federal programs. For example, if an agency has an IIJA program or SLFRF program, it will not need to continually update this document. This should be included first in order of precedence.
- [SLFRF Terms and Conditions](#) - This is the program specific terms and conditions for SLFRF. It should be included second in order of precedence. For other federal funding sources (i.e. HEERF), this would be replaced with the award-specific terms and conditions (which can be found in the originating grant award document).

SLFRF Specific Capital Expenditure Considerations

All SLFRF funded Capital Expenditure projects **must** comply with federal regulations, including, but not limited to, Uniform Guidance, SLFRF Final Rule, SLFRF Reporting and Compliance Guidelines, and award terms and conditions. Agencies managing Capital Expenditure projects must ensure that their subrecipients and subcontractors comply with all applicable state and federal regulations and requirements.

SLFRF Final Rule provides the following guidance:

Expenditures from closely related activities directed toward a common purpose are considered part of the scope of one project. These expenditures can include capital expenditures, as well as expenditures on related programs, services, or other interventions. A project includes expenditures that are interdependent (e.g., acquisition of land, construction of the school on the land, and purchase of school equipment), or are of the same or similar type and would be utilized for a common purpose (e.g., acquisition of a fleet of ambulances that would be used for COVID-19 emergency response). Recipients must not segment a larger project into smaller projects in order to evade review. A recipient undertaking a set of identical or similar projects (e.g., development of a number of new affordable housing complexes across the recipient jurisdiction) may complete one Written Justification comprehensively addressing the entire set of projects. SLFRF funded capital construction projects must also comply with all Office of the State Architect (OSA) guidance and policies, and use templates approved by the Office of the State Architect, unless statutorily exempted from OSA oversight. Additionally, SLFRF Capital Expenditure projects should comply with Uniform Guidance and SLFRF Award Terms and Conditions to manage all SLFRF Capital Expenditures projects.



Uniform Guidance

All federally funded projects, including SLFRF, must conform to Uniform Guidance. Some sections of Uniform Guidance that are specific to capital construction include:

Records Retention Requirements

SLFRF requires **five (5) years** of record retention, as opposed to the typical three (3) years per federal requirements.

Domestic Preference

This requirement applies to most items and construction materials including iron, aluminum, steel, cement, and other manufactured products that are made of metal, plastic, aggregate (which includes optical fiber) and lumber. These requirements apply to purchases by the State and Subrecipients, and it is the purchaser's responsibility to document how the preference was addressed. It is also the State's responsibility to ensure that the requirements of this section are included in all subawards including all contracts and purchase orders for work or products using federal funds and to ensure compliance with [2 CFR 200.322](#) Domestic Preference. For projects solely funded through SLFRF, Buy America does not apply, but Domestic Preference requirements do apply when SLFRF funds are used on an infrastructure project in conjunction with funds from other federal programs that require compliance with the Buy America Preference requirements. Refer to [Treasury FAQ 6.18 and 6.19](#).

Disposition Requirements

SLFRF funds may be used to acquire real and personal property, supplies, and equipment. Except for property, supplies, or equipment acquired using revenue loss funds (EC 6), recipients must follow the applicable provisions of the Uniform Guidance regarding property standards (2 CFR 200.310-316), subject to the requirements set out in the SLFRF FAQs document. When federal funds are used to acquire real and personal property, supplies, and equipment, recipients must follow the applicable provisions of the Uniform Guidance regarding property standards ([2 CFR 200.310-316](#)), when disposing of, or changing the use of, capital assets.

Period of Performance Disposition Instructions

During the period of performance, a recipient may use property, supplies, or equipment purchased or improved with SLFRF funds for a purpose other than the purpose for which it was purchased or improved **if such other purpose is also consistent with the eligible use.**



Procurement Guidance ([2 CFR 200.317-200.327](#))

State Agencies

SLFRF funded programs must follow 2 CFR 200.317 on procurement.

Subrecipients

Non-federal entities that are subrecipients of SLFRF funding must follow the federal procurement standards or their own policies, whichever is more restrictive. State agencies are responsible for monitoring subrecipients for compliance with federal procurement regulations.

Exigent Circumstances

The SLFRF FAQs 13.13 notes that the COVID-19 public health emergency does not itself qualify as a “public exigency or emergency” under 2 CFR 200.320(3)(c). Specifically, a recipient may not justify a noncompetitive procurement simply on the basis that the procurement is conducted during the public health emergency or that the project is in response to the public health emergency.

Additional Guidance

Prevailing Wage

While the Davis Bacon Wage Act does not apply to SLFRF funds per the SLFRF Final Rule, for projects over \$10 million, SLFRF reporting requires labor reporting that is substantively similar to Davis Bacon Wage reporting, and contractors should be made aware of their extensive labor reporting responsibilities under SLFRF. Additionally, the *Colorado Quality Apprenticeship Training Act of 2019* does not apply because the funding source is federal funds.

Capital Construction Projects

All Capital Construction projects over \$10 million must comply with Davis Bacon Wage Act reporting requirements. For additional information contact the Office of the State Architect.

Buy America

If an infrastructure project is funded by a source that requires compliance with the Buy America Act, even if it is funded by federal AND non-federal funding sources, the **entire project**, including the SLFRF portion, is subject to the Buy America provisions. If there are multiple projects within an award (i.e. an infrastructure project and a non-infrastructure project), **ONLY** the infrastructure portion is subject to the provisions. 4

