

## Procurement Guidance for SLFRF Awards

Procurement of property and services is a common post-award activity. All recipients of federal funds have a responsibility to follow general procurement standards under 2 CFR 200.317-327, and state procurement rules must be followed.

*For visual representation of the federal procurement thresholds, please see “OMB Procurement Claw” on the last page.*

### What Procurement Rules Apply in the Uniform Guidance?

#### Non-Federal Entity that is a State

#### ***200.317 - Procurements by states and Indian Tribes***

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with § 200.327-*Procurement of recovered materials*, and ensure that every purchase order or other contract includes any clauses required by section [§200.327](#) - Contract provisions.

#### ***200.318 - General procurement standards***

SLFRF recipients must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The documented procurement procedures must conform to the procurement standards identified in [§200.317](#) through [200.327](#).

#### ***200.319 - Competition***

All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and [§200.320](#).

#### ***200.320 - Methods of procurement to be followed***

SLFRF recipients must have and use documented procurement procedures, consistent with the standards of this section and [§200.317](#), [200.318](#), and [200.319](#) for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.



***200.321 - Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms***

All necessary affirmative steps must be taken to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

***200.322 - Domestic Preferences for Procurements***

As appropriate and to the extent consistent with law, a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products) should be utilized. The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

***§ 200.323 - Procurement of Recovered Materials***

SLFRF recipients and contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

***§ 200.324 - Contract Cost and Price***

A cost or price analysis must be performed in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the entity must make independent estimates before receiving bids or proposals.

***§ 200.325 - Federal awarding agency or pass-through entity review***

The Federal agency or pass-through entity Upon request, entities must allow review of the technical specifications on proposed procurements to ensure that the item or service specified is the one being proposed for acquisition. This review is generally requested under the following conditions: the entity's procurement standards do not comply with Federal standards; the procurement exceeds the Simplified Acquisition Threshold and/or a "brand" name product is specified in the procurement



and/or the proposed contract will be awarded to other than the lowest bidder in a sealed bid procurement.

**§ 200.326 - Bonding requirements**

The Federal agency or pass-through entity, for construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, entities may accept the bonding policy and requirements of the entity, provided there is a determination that the Federal interest is adequately protected.

**§ 200.327 - Contract Provisions- as applicable**

The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.

**§ 200.321 - Contracting with small and minority businesses women's business enterprises, and labor surplus area firms**

Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section: [2 CFR 200.321](#)

**§ 200.323 - Procurement of recovered materials**

SLFRF recipients and subrecipients or contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. [2 CFR 200.323](#)

**§ 200.327 - Contract provisions- as applicable**

The recipient's or subrecipient's non-Federal entity's contracts must contain the applicable provisions described in [Appendix II](#) to this part.



## Procurement Processes and Special Considerations

Competitive bidding requirements are necessary for federal for all non-federal entities to adhere to when engaging in procurement activities.

### Competitive Bidding Requirements

- Publication of requests
- Solicited from adequate number of sources when available
- Written method for conducting technical evaluation of bids
- Qualifications and price are both considered
- Small, minority, and women-owned

### Special Procurement Considerations for Federal Funding with SLFRF

#### Buy American

Awards made under the SLFRF program are not subject to the Buy American Preference requirements of the Infrastructure Investment and Jobs Act (IIJA). [42 FAQ #6.18](#)

However, SLFRF recipients may be subject to the Buy American preference requirements when SLFRF funds are blended or braided with other federal funds that require compliance with those requirements. Recipients should consult with other federal agencies administering other federal financial assistance. [42 FAQ #6.19](#)

#### Never Contract with the Enemy

The Recipient must exercise due diligence to ensure that none of the funds, including supplies and services, received under SLFRF are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, which must be completed through [2 CFR 180.300](#) prior to issuing a subaward or contract

#### Copeland “Anti-Kickback” Act

The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)). The Act provides that each contractor or subrecipient must be prohibited 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 or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.



## **Davis Bacon Labor Rates**

The Davis-Bacon Act requirements (prevailing wage rates) do not apply to projects funded solely with award funds from the SLFRF program unless the construction projects are on state owned property. For projects on state-owned property, please follow OSA guidance and requirements. Recipients may be otherwise subject to the requirements of the Davis-Bacon Act when SLFRF award funds are used on a construction project in conjunction with funds from another federal program that requires enforcement of the Davis-Bacon Act. Additionally, corollary state prevailing-wage-in-construction laws (commonly known as “baby Davis-Bacon Act”) may apply to projects. Please refer to [42 FAQ #4.8](#) concerning projects funded with both SLFRF funds and other sources of funding.

Treasury has also indicated in its reporting guidance that recipients will need to provide documentation of wages and labor standards for capital expenditure projects and infrastructure projects over \$10 million, and that that these requirements can be met with certifications that the project is in compliance with the Davis-Bacon Act (or related state laws, commonly known as “baby Davis-Bacon Acts”) and subject to a project labor agreement. Please refer to the Reporting and Compliance Guidance, Final Rule for more detailed information on the reporting requirement. [42 FAQ #6.15](#)

## **Prohibition on certain telecommunications and video surveillance services or equipment 2 CFR 200.216**

Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to procure, obtain, enter into, extend or renew a contract for equipment, services or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

## **Other restrictions based upon funding**

Recipients and subrecipients should review the Final Rule, as well as the Reporting and Compliance Guidance, Final Rule, for any other restrictions based upon receiving an SLFRF award.

## **Conflict of Interest, 2 CFR 200.112**

All recipients of SLFRF funds must have a Conflict of Interest policy in place and in practice.



## Suspension vs. Debarment

In an effort to ensure due diligence, agencies should always verify the status of the subrecipient with [www.sam.gov](http://www.sam.gov) prior to entering into any agreement.

- Suspension disqualifies a person or company from bidding on, receiving, or participating in federal grants and contracts
- Debarment excludes or disqualifies a person or company for a specific period of time, but generally not longer than three (3) years
- If federal funds are used for procurement, the contractor may be required to sign a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion
- Certification must be retained in grant records

## Procurement Methods

Procurements Methods are required for all types of procurement according to threshold levels. State procurement policies and procedures comply with 2 CFR 200, state policies may be more stringent. State agencies should follow state fiscal rules, as described in the first table. It's important to note: all recipients of federal funds have a fiduciary responsibility to follow general procurement standards in 2 CFR 200.

### **State of Colorado - Purchasing Thresholds R-24-103-201-01**

Special circumstance procurements, emergency procurements, reverse auctions, and sole source procurements may be used at any threshold, with the agency procurement official or Chief Procurement Officer (CPO) approval as required.

***Procurement Amount: Up to \$50,000***

***Type of Procurement: Discretionary***

#### ***Requirements:***

- No competition required\*

\*A governmental body without delegated purchasing authority may purchase goods or services with no competition required up to a limit of \$50,000



**Procurement Amount: \$20,000 and \$250,000**

**Type of Procurement: Small Purchase**

**Requirements:**

Documented Quote (DQ)

**Procurement Amount: \$250,000 and over**

**Requirement:**

Request for Proposal (RFP), Invitation for Bids (IFB), Invitation to Negotiate (ITN)\*\*

\*\* The CPO may approve or deny a request to use a DQ process when the estimated cost would exceed the small purchase threshold

**Informal Procurement Methods - Procurement up to \$250,000**

2 CFR 200.320(a)

**Procurement Amount: Up to \$10,000**

Please note that if the recipients or subrecipients maintain appropriate documentation, the recipient or subrecipient may increase the micro-purchase threshold to \$50,000 in accordance with the requirements at 2 CFR 200.320 (A)(1)(iv).

**Type of Procurement: Micro-Purchase**

**Requirements:**

Micro-purchases may be awarded without soliciting competitive price or rate quotations if the recipient or subrecipient considers the price to be reasonable based on research, experience, purchase history or other information and documents the recipient or subrecipient's files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-federal entity.

**Procurement Amount: Between \$10,000 and \$250,000**

**Type of Procurement: Small Purchase**

**Requirements:**

If small purchase procedures are used, price or rate quotations must be obtained from an adequate Number of qualified sources as determined to be appropriate by the non-federal entity.



## Formal (Competitive) Procurement Methods - Procurements over \$250,000

### 2 CFR 200.320(b)

Formal procurements require one of the following methods as appropriate to the type of procurement.

**Procurement Amount:** Over \$250,000 - Federal Simplified Acquisition Threshold (SAT)

**Type of Procurement:** Sealed Bids - a procurement solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. Preferred in the following conditions:

- a. A complete, adequate, and realistic specification or purchase description is available;
- b. Two or more responsible bidders are willing and able to compete effectively for the business; and;
- c. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

### **Requirements:**

If sealed bids are used, the following requirements apply:

- a. Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
- b. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidders to properly respond;
- c. All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly.
- d. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discount, transportation cost, and life cycle costs must be considered in determining which bid is lowest.
- e. Any and all bids may be rejected if there is a sound documented reason.





Noncompetitive Procurement Method - Applicable to noncompetitive procurement of any amount

2 CFR 200.320(c)

**Procurement Amount:** Any Amount

**Type of Procurement:** Noncompetitive (i.e. Sole Source)

Please note: noncompetitive procurements are rarely approved

**Requirements:**

Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

- a. The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see [2 CFR 200.320\(a\)\(1\)](#));
- b. The item is available only from a single source;
- c. The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
- d. The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
- e. After solicitation of a number of sources, competition is determined inadequate.

**Procurement Amount:** Any Amount

**Type of Procurement:** Cooperative Purchasing Agreement

**Requirements:**

No threshold.

Contracts which are already negotiated (such as Master Service Agreement for ARPA grant compliance).

