

BEST PRACTICES FOR USING LOCAL FISCAL RECOVERY FUNDS

STATE OF NEW JERSEY
OFFICE OF THE STATE COMPTROLLER

September 2023



BEFORE WE BEGIN

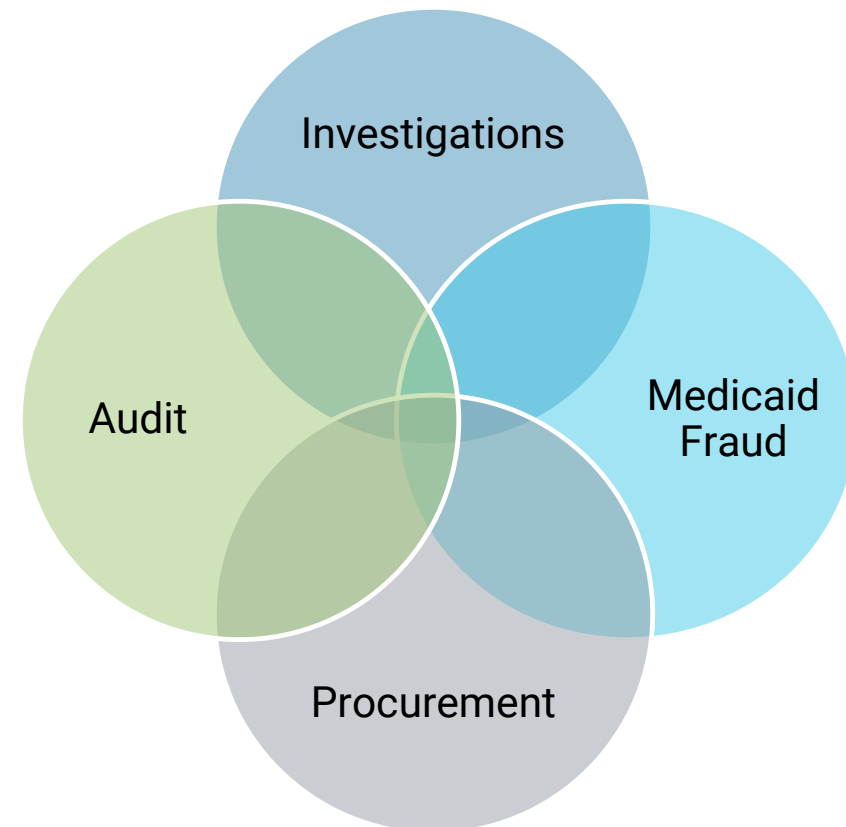
- Q & A at the end of the presentation
- Sign up for COVID-19 compliance updates by sending an email to COVID.Oversight@osc.nj.gov

Disclaimer: This presentation is intended to be a resource and serve as general guidance for local governments. Local governments should consult with legal counsel as to whether a specific use or expenditure complies with applicable laws and regulations.



OFFICE OF THE STATE COMPTROLLER

- Created in 2007 as an independent agency
- Oversee and audit state agencies, independent state authorities, state colleges and universities, local governments, and boards of education
- Provide technical assistance and training regarding best practices for financial management, internal controls, and preventing misuse of public funds
- Special units, COVID-19 Compliance and Oversight Project, Police Accountability





COVID-19 COMPLIANCE AND OVERSIGHT PROJECT

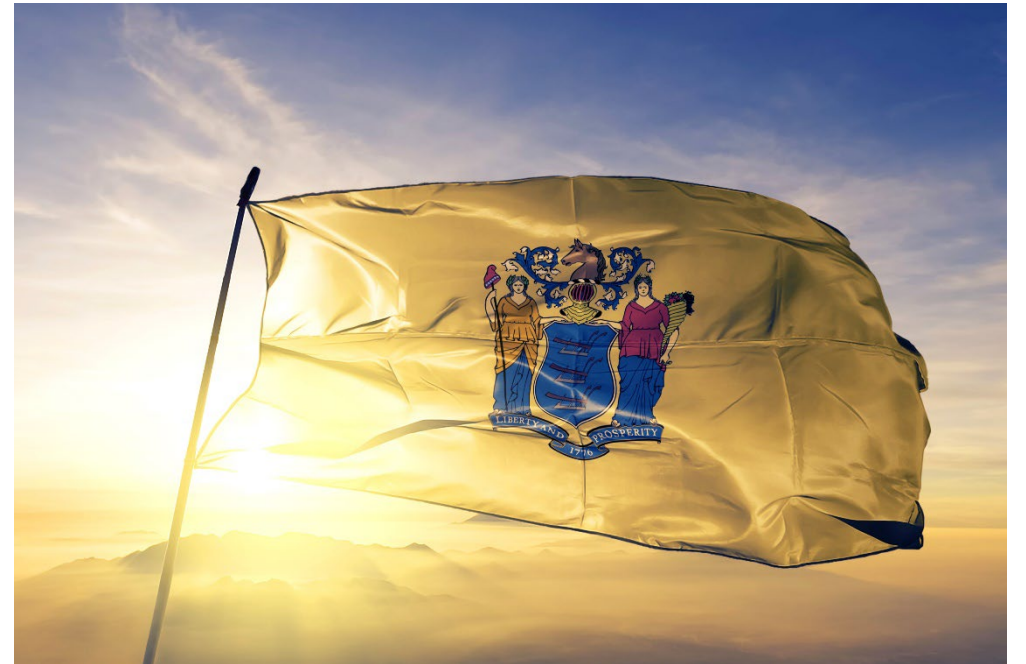
CAROLINE JONES, DIRECTOR



COVID-19 COMPLIANCE AND OVERSIGHT PROJECT

Special project within OSC dedicated to ensuring proper oversight and accountability over COVID-19 Recovery Funds.

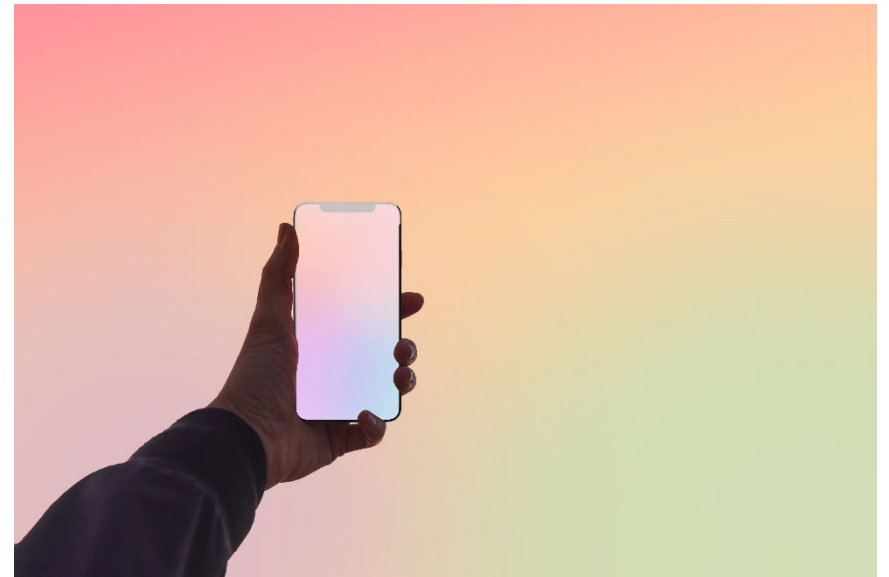
- Ongoing monitoring and oversight
- Special projects and targeted reviews
- Technical assistance and training for state and local government units.



GET IN TOUCH

OSC's Hotline is active – and we keep tips confidential.

- Call us: 1-855-OSC-TIPS
- Email us: comptrollertips@osc.nj.gov
- Report online: Complaint form found at www.nj.gov/comptroller



AMERICAN RESCUE PLAN ACT

- \$1.9 trillion economic stimulus bill signed by President Biden on March 11, 2021
- \$350 billion CSLFRF
- \$6.2 billion to the State
- \$1.8 billion to counties
- \$1.19 billion to metropolitan cities
- \$578 million to non-entitlement units



LOCAL FISCAL RECOVERY FUNDS

- Flexible funds to support the public health response to COVID-19 and work toward an equitable economic recovery.
- Obligate funds between March 3, 2021 and December 31, 2024, provided that the obligations are expended by December 31, 2026
- Special deadline for Title 1 and Surface Transportation projects
- Unused funds must be returned to U.S. Treasury



APPLICABLE GUIDANCE

- American Rescue Plan Act of 2021
- May 2021 - Interim Final Rule
- Jan 2022 - Final Rule
- December 2022 Consolidated Appropriations Act, “ARPA Flex”
- August 2023 - Interim Final Rule
- FAQs for each rule
- Compliance and Reporting Guidance
- Non-entitlement Unit information

The screenshot shows the U.S. Department of the Treasury website. The header includes the Treasury logo and the text "U.S. DEPARTMENT OF THE TREASURY". Below the header is a navigation bar with links for "ABOUT TREASURY", "POLICY ISSUES", "DATA", "SERVICES", and "NEWS". A search bar is located on the right side of the navigation bar. Below the navigation bar is a green banner with the text "We can do this. Find COVID-19 vaccines near you. Visit Vaccines.gov." The main content area features a section titled "POLICY ISSUES" with a sub-section for "COVID19 Economic Relief". Under this sub-section, there are links for "Assistance for American Families and Workers", "Assistance for Small Businesses", and "Assistance for State, Local, and Tribal Governments". The "Assistance for State, Local, and Tribal Governments" link is highlighted, leading to a page titled "State and Local Fiscal Recovery Fund". This page includes a "Request Funding" link and a list of links for "Request Funding", "Tribal Governments", and "Non-Entitlement Units". The main heading of the page is "Coronavirus State and Local Fiscal Recovery Funds". Below this heading is a paragraph: "The American Rescue Plan will deliver \$350 billion for eligible state, local, territorial, and Tribal governments to respond to the COVID-19 emergency and bring back jobs." Below this paragraph is another paragraph: "The Coronavirus State and Local Fiscal Recovery Funds provide a substantial infusion of resources to help turn the tide on the pandemic, address its economic fallout, and lay the foundation for a strong and equitable recovery." On the right side of the page, there are two blue buttons: "REQUEST FISCAL RECOVERY FUNDS" and "RECEIVE COVID-19 RELIEF UPDATES". Below these buttons is a list of links: "Interim Final Rule", "Fact Sheet", "FAQs", "Quick Reference Guide", "Press Release", "Tribal Government Information", "Non-Entitlement Unit Information", and "Compliance and Reporting Guidance".

<https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>

APPLICABLE GUIDANCE (CONT.)

- Award Terms and Conditions
 - Use of funds
 - Period of performance
 - Reporting
 - Maintaining records/access to records
 - Pre-award costs
 - Administrative costs
 - Conflicts of interest policies
 - Compliance with other federal laws
 - Hatch Act
 - Whistleblower protections
 - AND MORE

OMB Approved No. 1505-0271
Expiration Date: November 30, 2021

U.S. DEPARTMENT OF THE TREASURY
CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS

Recipient name and address: [Recipient to provide]	DUNS Number: [Recipient to provide] Taxpayer Identification Number: [Recipient to provide] Assistance Listing Number: 21.027
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Sections 602(b) and 603(b) of the Social Security Act (the Act) as added by section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021) authorize the Department of the Treasury (Treasury) to make payments to certain recipients from the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund.

Recipient hereby agrees, as a condition to receiving such payment from Treasury, to the terms attached hereto.

Recipient:

Authorized Representative:

Title:

Date signed:

APPLICABLE GUIDANCE (CONT.)

- Uniform Guidance 2 CFR Part 200
- Local Finance Notices 2021-11, 2021-13, 2021-21, 2022-07, 2022-08
- Email: SLFRP@treasury.gov



OVERVIEW OF ELIGIBLE USES

- Support Public Health response
- Expand public sector capacity
- Water, sewer, and broadband infrastructure
- Address negative economic impacts
- Premium pay for essential workers
- Replace lost public sector revenue



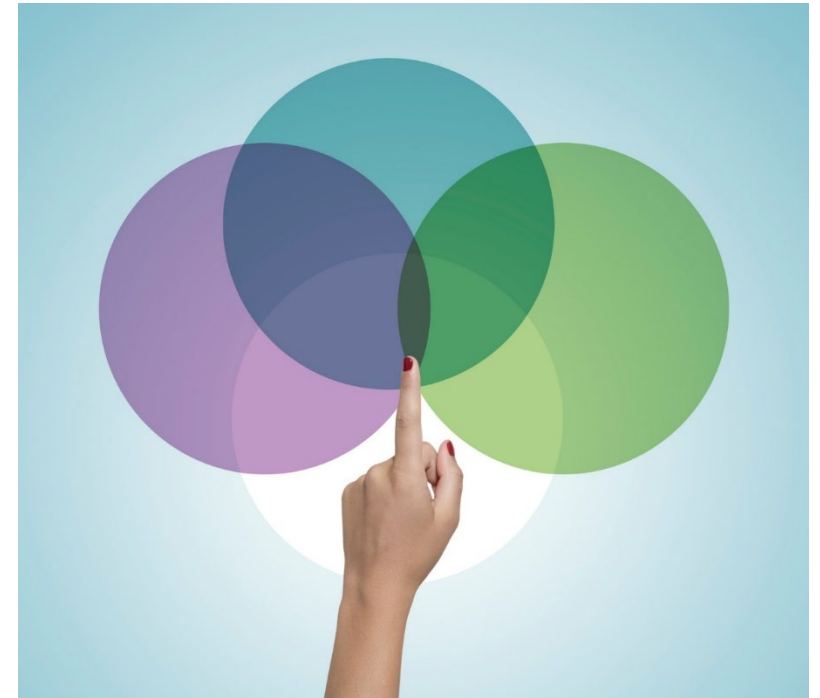
NEW ELIGIBLE USES

- Emergency relief from natural disasters
- Title 1 projects
- Surface transportation projects



DUPLICATION OF BENEFITS (DOB)

- When a person, household, business, government, or other entity receives financial assistance from multiple sources for the same purpose, and the total assistance received for that purpose is more than the total need for assistance
- Prohibited under ARPA and Uniform Guidance
- Funds found to be distributed in excess of need may be subject to clawback
- Significant risk of duplication if local or county program overlaps with existing state or federal program



DUPLICATION OF BENEFITS (DOB) BEST PRACTICES

Recommendations

- Coordinate with other state, local and non-profit partners to determine other sources of assistance
- Develop policies and procedures to address DOB
- Ensure appropriate contractual language
- Develop a checklist for reviewers



EFFECTIVE INTERNAL CONTROLS

Recommendations

- Uniform Guidance requires effective internal controls
- Identify Risks
- Monitor grant programs
- Respond and reevaluate
- Manage vendors and contracts



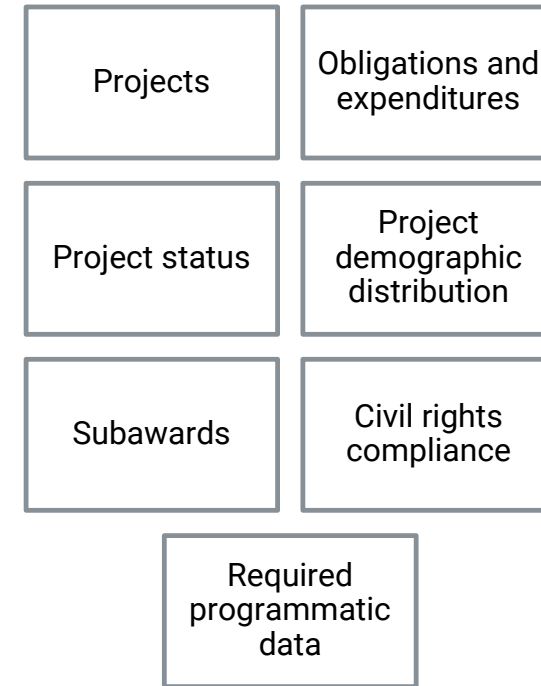
DOCUMENTATION

- Retention policy: 5 years after all funds have been expended or returned to U.S. Treasury, whichever is later
- Obtain documentation from subrecipients and other third-party contractors
- In the eyes of auditors/OIGs, if it isn't documented, IT DIDN'T HAPPEN!



PROJECT AND EXPENDITURE REPORT

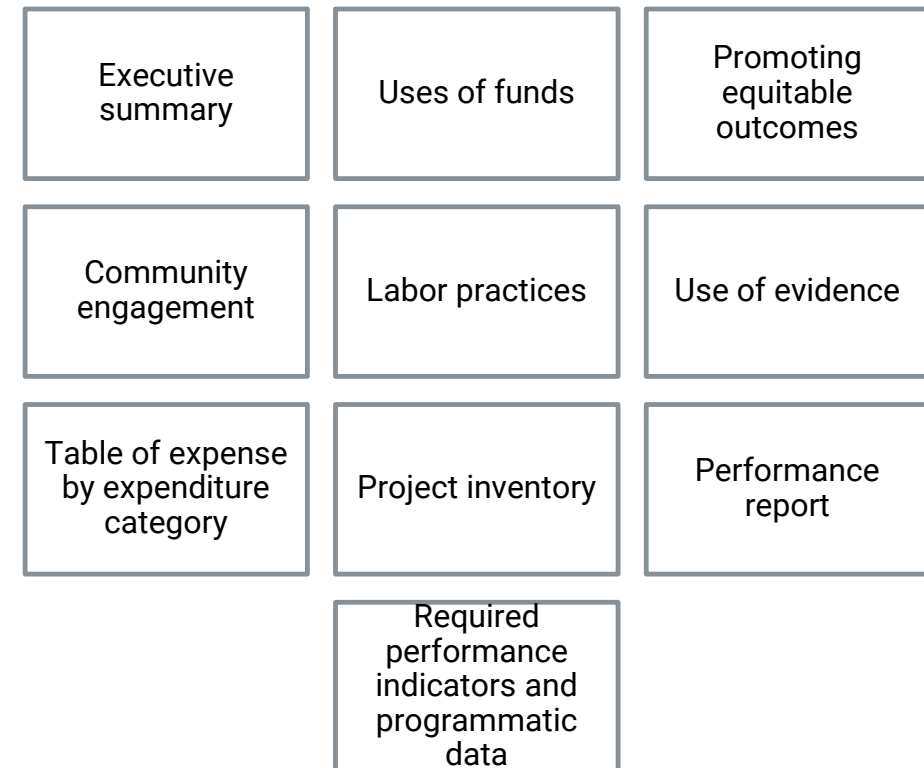
- Report on projects funded, expenditures, and contracts and subawards over \$50,000, and other information
 - Quarterly: Metropolitan cities and counties that received more than \$5M
 - Annually: Non-entitlement units and metropolitan cities and counties that received less than \$5 million



See pages 15-23 of U.S. Treasury's Compliance and Reporting Guidance

RECOVERY PLAN PERFORMANCE REPORT

- Metropolitan cities and counties with a population greater than 250,000 residents
- Provides information on the projects and how recipients plan to ensure outcomes are achieved in an effective, efficient, and equitable manner
 - Includes key performance indicators identified by the recipient and U.S. Treasury
 - Must be posted on recipient's website and provided to U.S. Treasury



See pages 23-28 of U.S. Treasury's Compliance and Reporting Guidance

EXECUTIVE ORDER 267

- Executive Order 267 (Murphy, October 8, 2021)
- All recipients of LFRF must provide copies of all reports filed with United States Treasury to the Department of Community Affairs, Division of Local Government Services (LGS)
- Purpose is to identify duplication of benefits
- Local Finance Notice 2022-08



FREE CONSULTING SERVICES FOR COUNTIES AND MUNICIPALITIES

- The State of New Jersey Governor's Disaster Recovery Office is offering FREE consulting services for Local Fiscal Recovery Fund
- State has hired four consulting firms that specialize in federal grants and in particular disaster recovery operations and are available to advise on use and compliance issues with LFRF.
- Email GOVGDRO@nj.gov



TOP TEN TAKEAWAYS

1. Know the rules
2. Document, document, document
3. Monitor vendors/contracts
4. Coordinate to avoid duplication of benefits
5. Meet reporting deadlines
6. File your US Treasury reports with DLGS
7. Implement appropriate internal controls
8. Monitor sub recipients
9. Get FREE consulting services
10. Report suspected fraud, waste, or abuse



PROCUREMENT DIVISION

BARBARA GEARY, DIRECTOR



PROCUREMENT: AGENDA

- Agenda for today
 - OSC review thresholds
 - Procurement requirements under the Uniform Guidance
 - SLFRF Exceptions
 - Brief update on Russia/Belarus Certification



PROCUREMENT: OSC CONTRACT REVIEW THRESHOLDS

Contracts valued at \$12.5 million or more

- Submit to OSC for review at least 30 days prior to proposed advertisement date

Contracts valued at more than \$2.5 million but less than \$12.5 million

- Submit to OSC 20 business days after the award

Emergency contracts valued at \$2.5 million or more

- Submit to OSC 30 business days after the award

PROCUREMENT: UNIFORM GUIDANCE OVERVIEW



Local Fiscal Recovery Funds

- Must comply with 2 CFR 200.318-200.327
- And the Local Public Contracts Law
- Most restrictive rule



Comply with terms and conditions of funding agreement



Use the appropriate procurement method



Carefully review bid documents to ensure all federally required contract provisions have been included - 2 CFR Part 200, Appendix II

PROCUREMENT: UNIFORM GUIDANCE AND THE SLFRF



State and Local Fiscal Recovery Funds (SLFRF)

- Procurement Standards in the Uniform Guidance applies – 2 CFR 200.318 – 200.327



Coronavirus Relief Funds (CRF)

- Recipients were permitted to use their own procurement policies to acquire goods and services
- Contracts made under emergency circumstances cannot automatically be transferred to SLFRF

ROAD MAP FOR USING SLFRF

SLFRF Revenue Loss Projects:

- Not subject to Procurement Standards under the Uniform Guidance
- May be used for federal match or cost-share requirements for other federal programs
- See FAQ Final Rule 13.15 for list of requirements that apply
- **STILL SUBJECT TO LPCL!**



For projects SOLELY funded with SLFRF, the following are not applicable:

- Davis Bacon Act
- National Environmental Policy Act
- Build America, Buy America Act requirements of Infrastructure Investment Jobs Act



Braided or blended projects that include both SLFRF and other federal funding:

- Look to the terms of the other federal funding to determine which federal requirements apply
- For example, if using SLFRF on a road project with Federal Highway Administration funding, Davis Bacon Act applies

PROCUREMENT: CONTRACT v. SUBAWARD

Contract

- Legal instrument by which a recipient or subrecipient purchases property or services needed to carry out federally funded project or program
- 2 CFR 200.331(b)

Subaward

- Award provided by a recipient of a federal award to a subrecipient to carry out part of a federal award on behalf of the recipient
- 2 CFR 200.331(a)

PROCUREMENT

Uniform Guidance – 2 CFR 200.318-200.327

Local Public Contracts Law: *N.J.S.A. 40A:11-1 et seq.*

“Fair and Open” *N.J.S.A. 19:44A-20.7*

PROCUREMENT: BIDDING THRESHOLDS

LPCL Bid thresholds

- Quote Threshold = more than \$6,600 but less than or equal to \$44,000
- Bid Threshold = more than \$44,000
- Pay to Play compliance (non Fair and Open) = over \$17,500

Federal Bid thresholds

- Micro Purchase = less than \$10,000
- Small Purchase = greater than \$10,000 and less than \$250,000
- Simplified Acquisition Threshold (SAT) = over \$250,000

UNIFORM GUIDANCE – PROCUREMENT STANDARDS

2 CFR PART 200

200.318 General Procurement Standards

200.319 Competition

200.320 Methods of Procurement to be Followed

200.321 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

200.322 Domestic Preferences for Procurements

200.323 Procurement of Recovered Materials

200.324 Contract Cost and Price

200.325 Federal Awarding Agency or Pass-Through Entity

200.326 Bonding Requirements

200.327 Contract Provisions

PROCUREMENT: UNIFORM GUIDANCE

Prior to Bidding & Contracting

- Adopt written purchasing procedures that conform to the federal rules – 2 CFR 200.319(d)
- Adopt written standards of conduct for conflicts of interest and governing the actions of employees and public officials involved in the selection, award or administration of the contract - 2 CFR 318(c)
- Exclude contractors that develop or draft specifications, requirements, statements of work invitations for bids or requests for proposals from competing for such procurements – 2 CFR 319(b)

PROCUREMENT: UNIFORM GUIDANCE

Prior to Bidding & Contracting

- Conduct a price or cost analysis for every procurement in excess of the SAT – 2 CFR 200.324
- Avoid the acquisition of unnecessary or duplicative items – 2 CFR 200.318(d)
- Document the procurement method rationale – 2 CFR 200.318(i)

PROCUREMENT: UNIFORM GUIDANCE

Bidding & Contracting

- Full and open competition – 2 CFR 200.319(a)
- Use authorized procurement methods – 2 CFR 200.320
- Avoid unreasonable requirements to qualify bidders - 2 CFR 200.319(b)(1)
- Bid Bond is 5% - 2 CFR 200.326 (a)
- Payment & Performance Bonds – 100% of contract price – 2 CFR 200.326 (b) and (c)
- Use brand name “or equal” - 2 CFR 200.319(b)(6) and (d)(1)
- No geographic limitations on bidders 2 CFR 200.319(c)

PROCUREMENT: UNIFORM GUIDANCE

Bidding & Contracting

- Take affirmative steps to ensure MBE/WBE and small business participation – 2 CFR 200.321
- Specifications/scope of work must be clear - 2 CFR 200.319(d)(1)
- RFPs must include all evaluation criteria - 2 CFR 200.319(d)(2)
- Avoid time and materials contracts - 2 CFR 200.318(j)
- Include all federally required contract clauses - 2 CFR Part 200, Appendix II – 2 CFR 200.327

PROCUREMENT: UNIFORM GUIDANCE

Labor Standards

- If SOLELY SLFRF funded, Davis Bacon Act does not apply
 - NJ Prevailing Wages DO apply
 - May include a Project Labor Agreement
- If blended or braided funding, does other federal funding require Davis Bacon Act compliance?

PROCUREMENT: UNIFORM GUIDANCE

Exceptions from Competition – 2 CFR 200.320(c)

- Item is only available from a single source
- Public exigency
- After solicitation of a number of sources, competition is determined to be inadequate
- Your federal award expressly allows noncompetitive procurement

END OF FEDERAL AND STATE EMERGENCY DECLARATIONS

Non-competitive Emergency Procurements:

- Cannot rely on National Emergency or public health emergency
- Must make a fact based analysis in compliance with:
 - 2 CFR 200.320(c); and
 - LPCL – N.J.S.A. 40A:11-6.1 and N.J.A.C. 5:34-6

March 4, 2022 - Governor Murphy signs E.O. 292 ending the public health emergency

April 10, 2023 – Congress terminated the COVID-19 National Emergency

May 11, 2023 – Secretary of the Department of Health and Human Services declared end to COVID-19 public health emergency

PROCUREMENT: UNIFORM GUIDANCE

Prior to Award

- Award only to responsible contractors
- Do not contract with a debarred or suspended vendor or contractor – 2 CFR 200.214
- Document the award based on:
 - Bid = Lowest responsible bidder - 2 CFR 200.320(b)(1)(ii)(D)
 - RFP = Most advantageous, price and other factors considered – 2 CFR 200.320(b)(2)(iii)

PROCUREMENT - COOPERATIVE PURCHASING

Types of Cooperative Purchasing:

- LPCL Cooperative Purchasing Programs
- NJ State Contracts on NJSTART
- National Cooperative Purchasing Programs
 - Will use of the coop contract result in cost savings?
N.J.S.A. 52:34-6.2
 - See also LFN 2011-35

Before making purchases with federal funds from cooperative contracts, make sure the underlying contract:

- complies with allowable procurement methods in 2 CFR 200.320
- included affirmative steps to assure SBE/MBE/WBE participation
- Did not include geographic preferences
- includes Federal contract provisions
- Contracting unit must conduct a cost or price analysis

UNIFORM GUIDANCE: FEDERAL CONTRACT PROVISIONS

2 CFR PART 200, APPENDIX II

(A) Contracts above the SAT must address administrative, contractual or legal remedies for breach, including sanctions or penalties as appropriate

(B) Contracts above \$10,000 must address termination for cause and convenience

(C) Federally assisted construction contracts must include Federal EEO language at 41 CFR Part 60

(D) When required by federal legislation, compliance with Davis Bacon Act

(E) Compliance with Contract Work Hours and Safety Standards Act for contracts over \$100,000 and involve employment of mechanics/laborers

(F) Rights to Inventions Made Under a Contract or Agreement for federal award that meet the definition of “funding agreement” under 37 CFR 401.2

(G) Clean Air Act and Federal Water Pollution Act for contracts and subgrants over \$150,000

(H) Debarment and Suspension Executive Orders 12549 and 12689 and 2 CFR 180.220

(I) Contractors bidding on an award exceeding \$100,000 must file Byrd Anti-Lobbying certification

(J) Contractors must comply with the Solid Waste Disposal Act and the procurement of recovered materials – 2 CFR 200.323

(K) Prohibition of certain telecommunications and surveillance services or equipment – 2 CFR 200.216

(J) Domestic Preferences for procurements – 2 CFR 200.322

PROCUREMENT: STATE LAW REQUIREMENTS



Must comply with LPCL and State statutory requirements for public works contracts:

- Prompt Payment Act – N.J.S.A. 2A:30A- 1 *et seq.*
- Public Works Contractor Registration Act – N.J.S.A. 34:11-56.48 *et seq.*
- Affirmative Action and Equal Employment Opportunity – N.J.S.A. 10:5-31; N.J.A.C. 17:27;
 - Include “Exhibit B” in all construction contracts
- Mandatory Anti-Discrimination Language – N.J.S.A. 10:2-1
- Federal Debarment Certification – N.J.S.A.52:32-44.1
- N.J. Prevailing Wage Act – N.J.S.A. 34:11-56.25 *et seq.*
- Bid Guarantee – N.J.S.A. 40A:11-21 (if superseded by UG - use 5%)
- Consent of Surety – N.J.S.A. 40A:11-22

PROCUREMENT: STATE LAW REQUIREMENTS



More State requirements for ALL contracts types

- OSC Record Retention Language – N.J.A.C.17:44-2.2
- Statement of Corporate Ownership – N.J.S.A.52:25-24.2
- Business Registration Certificate – N.J.S.A.52:32-44
- Disclosure of Investment Activities in Iran – N.J.S.A. 52:32-55 *et seq.*; N.J.S.A. 40A:11-2.1
- Annual Political Contribution Disclosure – N.J.S.A. 19:44A-20.27
- Acknowledgement of Addenda – N.J.S.A. 40A:11- 23.1
- Set-Aside Contracts, if applicable, must be in the advertisement – N.J.S.A. 40A:11-41 to 49
- Buy American – N.J.S.A. 40A:11-18
- N.J.S.A. 10:5-31; N.J.A.C. 17:27;
 - Include “Exhibit A” in all goods and services contracts

UPDATE: CERTIFICATION RE PROHIBITED ACTIVITIES IN RUSSIA AND BELARUS

August 17, 2023 notice from the Division of Local Government Services:

P.L. 2022, c. 3, signed into law on March 9, 2022, required the State Department of the Treasury (Treasury) to develop, based on credible information available to the public, a list of persons and entities engaging in prohibited activities in Russia or Belarus (Russia-Belarus list). On August 4, 2023, a company obtained a temporary restraining order (TRO) from the United States District Court for the District of New Jersey, which enjoins the State from enforcing N.J.S.A. 52:32-60.1 against that company on the ground that the statute is likely inconsistent with federal law. Due to the ongoing litigation, Treasury has removed the Russia-Belarus list from its website, and the State (along with its agencies and instrumentalities) has voluntarily suspended further implementation of the Russia-Belarus law until further order of the Court.

While the State continues to defend the law in court, in light of the Court's decision and the Russia-Belarus list being taken down, contracting units under the Local Public Contracts Law, Public School Contracts Law, and County College Contracts Law are not required to enforce the Russia-Belarus vendor/contractor certification requirement at this time. At this time, the Russia-Belarus list also does not apply to redeveloper designations under the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et seq.) and to agreements for payments-in-lieu- of-taxes (PILOTs) or other municipal property tax abatements. This could change based upon future legal developments. Please review the Treasury Notice at <https://www.state.nj.us/treasury/administration/pdf/NoticeRussia.pdf> for further information.

TOP FIVE TAKEAWAYS

Identify all your
funding sources

Prepare a cost
estimate

Prepare a
timeline and
plan for your
procurements

If estimated cost
is over \$12.5
Million plan for
OSC 30-day
review prior to
advertising your
bid

Incorporate the
federal contract
provisions in
your bid
template.

ASSISTANCE TO COUNTIES AND MUNICIPALITIES

No-cost assistance on SLFRF questions from the Governor's Disaster Recovery Office ("GDRO")

GDRO website has created an Information Hub with resources available to local governments

May request to have a State-procured consultant to provide advice and assistance during or after the creation of recovery programs by emailing: GOVGDRO@nj.gov and

completing the: [LFRF Consulting Request Form](#)

REPORTING FRAUD, WASTE, AND ABUSE

If you have any information about the fraud, waste, or abuse of Local Fiscal Recovery Funds or other COVID-19 relief funds, you can contact the New Jersey Office of the State Comptroller through:

- Online complaint form found at www.nj.gov/comptroller
- By email at ComptrollerTips@osc.nj.gov
- By calling the toll-free hotline, **1-855-OSC-TIPS**

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QUESTIONS?

