



# PROCUREMENT GUIDE

## TENNESSEE TEBF-ARP BROADBAND SUBRECIPIENTS

TENNESSEE DEPARTMENT OF ECONOMIC & COMMUNITY  
DEVELOPMENT  
RURAL DEVELOPMENT DIVISION, BROADBAND PROGRAM

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# Guide to Reporting and Compliance Obligations for Tennessee Emergency Broadband Fund – American Rescue Plan (TEBF-ARP) Broadband Grant Recipients

This Guide to Procurement and Compliance Obligations covers Tennessee’s TEBF-ARP Broadband program. This document is intended as a guide, not as a substitute for a thorough knowledge of state and Federal laws and regulations referenced in this document. This document may be updated to incorporate requirements more fully. In the event of any discrepancy, Federal regulations will prevail. The Grantee is responsible for compliance with the most current and stringent of any applicable local, State or Federal law or regulation(s).

The TNECD Broadband Office does not discriminate on the basis of age, race, color, religion, sex, national origin, familial status or disability in the admission, access to, treatment of, or employment in, its Federally assisted programs or activities.

For more information, visit <https://www.tn.gov/e cd/rural-development/tne cd-broadband-initiative.html>, or contact our office at [ECD.Broadband@tn.gov](mailto:ECD.Broadband@tn.gov).

## A Note on Sources of Funds

Under the American Rescue Plan Act (ARPA), the US Department of Treasury has implemented two different funding sources for broadband infrastructure projects: 1.) The State and Local Fiscal Recovery Fund (SLFRF) program; and 2.) The Capital Projects Fund Program. Grantees are responsible for being aware which source of funds applies to the Grantee’s award. While some requirements of the programs are similar, these programs are separate and may have different requirements regarding eligibility and reporting and compliance, as detailed below.

## Responsibilities – Recipients and Subrecipients

Subrecipients (municipal and county governments, non-profits, and private entities) receive subawards from the Recipient (the State) to carry out a Project. Subrecipients/grantees must comply with statutory/regulatory requirements and terms and conditions of award. Subrecipients must provide TNECD with any and all information requested by TNECD, so that it may report to the Treasury on subrecipient’s/grantee’s use of grant funds.

## Subaward definition

An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity (PTE). It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided

through any form of legal agreement, including an agreement that the pass-through entity considers a contract.<sup>1</sup>

#### Access to Subrecipient Records

Recipients and subrecipients/grantees must maintain records and financial documents for five years after all funds expended or returned.<sup>2</sup>

Subrecipient must permit the Pass-Through Entity (TNECD, Broadband Office) and auditors access to subrecipient's records and financial statements as necessary.<sup>3</sup>

#### SAM.gov Registration Requirement

In addition to the requirements above, subrecipients/grantees must have an active registration with the System for Award Management (SAM) (<https://www.sam.gov>).<sup>4</sup>

#### Enforcement Action for Noncompliance<sup>5</sup>

Enforcement action measures may be taken against noncompliant subrecipients by recipients/PTE's, including requests from Recipients/TNECD, Broadband Office that Grantees remediate any deficiencies.

#### Eligible and Ineligible Costs

While informed by the Federal Uniform Guidance<sup>6</sup> grantees must follow the TNECD's published list of eligible and ineligible costs. Eligible expenses are costs necessary to provide broadband service to an end user. This includes costs associated with the installation and/or acquisition of middle-mile and last-mile broadband infrastructure that supports broadband service at the locations and speeds identified in the application. If an eligible or ineligible cost is unique to a particular program, it is noted prior to that item. Eligible project activities and costs include:

1. Network and access equipment costs;
2. Reasonable make-ready and one-time pole licensing costs, excluding recurring pole attachment payments;
3. Equipment shelter, land, site preparation, and site restoration costs;
4. Customer premises equipment: Funding only covers up to the network demarcation point (e.g., NID or ONT);
5. Professional services: Includes engineering and project management costs involved in designing and constructing the proposed project;
6. Testing;

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<sup>1</sup> Uniform Guidance, 2 CFR §200.1.

<sup>2</sup> See Grant Disbursement Agreement, Section 9.02(a,c) (Record Retention).

<sup>3</sup> 2 CFR §200.332(a)(5), Uniform Guidance.

<sup>4</sup> SLFRF Treasury Compliance and Reporting Guidance, (June 10, 2022), p.12.

<sup>5</sup> See §200.339 Uniform Guidance for further information.

<sup>6</sup> Subpart E of 2 CFR 200; as well as 48 CFR §31.2 for private entities.

7. Other upfront costs: Includes any other upfront costs not covered in other categories, such as site preparation, permits, required licenses, sales tax applicable to new equipment purchases, shipping and warehousing expenses, and miscellaneous minor material; and

8. Vehicles (on a case-by-case basis)

Internal labor costs incurred as part of eligible project activities are only reimbursable up to the proportion of employees' time spent exclusively on project activities during the period for which reimbursement is sought. When seeking reimbursement, applicants must submit such costs as line-items and provide supporting documentation for the expense. Supporting documentation shall include time spent by each employee on project activities, total time spent by each employee during the period for which reimbursement is sought, and an hourly cost that may include employee salary. Indirect costs are not reimbursable.

Costs that appear excessive and/or without justification and costs not considered eligible will not be reimbursed.

**Ineligible costs include:**

1. Internal administrative activities;
2. Fundraising activities;
3. Computers or office equipment;
4. Equipment owned or leased by the customer, including routers and modems, and any other costs beyond the network interface point,
5. Operating expenses,
6. Expenses incurred prior to the date of the grant award announcement (with the exception of Make Ready and Inventory backdated to March 3, 2021);
7. Payment of interest or principal on outstanding debt instruments, or other debt service costs;
8. Fees or issuance costs associated with the issuance of new debt;
9. Satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding; or

## 10. To support or oppose collective bargaining.<sup>8</sup>

Expenditures on ineligible costs cannot be used as match. Projects must primarily serve Targeted addresses. Facilities that are needed to deliver last-mile broadband service to Targeted addresses and incidentally cover non-Targeted addresses are reimbursable, but expenditures solely to benefit non-Targeted addresses are not reimbursable. Customer drops, installations, and equipment at non-Targeted addresses are not eligible for reimbursement.

### Allowable Costs

In addition to State requirements, grantees must comply with Federal requirements related to allowed costs. While conformance with State requirements will generally result in conformance with Federal requirements, grantees must comply with any additional applicable Federal requirements or prohibitions, even when not specifically required by the State.

### Reasonable Costs – Factors (For-profit/private Entities)<sup>9</sup>

Specific to for-profit private subrecipients, factors affecting whether a cost is reasonable or not include:

- Whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or the contract performance;
- Generally accepted sound business practices, arm's length bargaining, and Federal and State laws and regulations;
- The contractor's responsibilities to the Government, other customers, the owners of the business, employees, and the public at large; and
- Any significant deviations from the contractor's established practices<sup>10</sup>

### Reasonable Costs – Factors (non-for-profit/local government entities)

For non-profit/government entities, reasonable cost factors to consider are<sup>11</sup>:

- Whether the costs are those of a type generally recognized as ordinary and necessary for the operation of the Subrecipient/Grantee or the proper and efficient performance of the Federal award;
- The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, State, local, tribal, and other laws, and regulations; and Terms and conditions of the Federal award
- Market process for comparable goods or services for the geographic area

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<sup>8</sup>This does not affect the ability to use funds to comply with 41 C.F.R. 60-1.4.

<sup>9</sup> 48 CFR 31.2

<sup>10</sup> 48 CFR 31.201-3.

<sup>11</sup> 2 CFR §200.404.



- Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the subrecipient.
- Whether the non-profit/government entity Subrecipient/Grantee significantly deviates from its established practices and policies regarding the incurrence of costs.

#### Allocable Costs – Factors (Private/For-Profit Entities)<sup>12</sup>

For for-profit/private entity Grantees, threshold considerations for whether the costs are allocable to a Federal award are if it:

- Is incurred specifically for the contract;
- Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received; or
- Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

#### Allocable Costs – Factors (non-profit/government Entities)<sup>13</sup>

Costs are allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance to relative benefits received. The standard is met if the cost:

- Is incurred specifically for the Federal award;
- Benefits both the Federal award and the other work of the Subrecipient/Grantee, and can be distributed in proportions that may be approximated using reasonable methods; and
- Is necessary to the overall operation of the Subrecipient/Grantee entity and is assignable in part to the Federal award in accordance with the principles of this subpart (Cost Principles).
- Any costs allocable to a particular Federal award may not be charged to other Federal awards. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.
- **Direct Cost allocation principles:** If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined, then the costs may be allocated or transferred to benefited projects on any reasonable documented basis.

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<sup>12</sup> 48 CFR §31.201-4.

<sup>13</sup> Uniform Guidance, §200.405.

- **Cost Accounting Standards (CAS):** If the contract is subject to cost accounting standards, costs must be allocated to the contract pursuant to the Cost Accounting Standards. If CAS is applicable, allocation of costs in accordance with CAS takes precedence over the allocation provisions above.

#### Costs Reimbursed by Other Federal/State Funding Streams

If considering deploying broadband to locations where there are existing enforceable Federal or State funding commitments for wireline service at speeds of at least 100 Mbps download and 20 Mbps upload speed, subrecipients should ensure that neither CPF nor SLFRF funding will be used for costs that will be reimbursed by these other Federal or State funding stream(s).<sup>14</sup>

#### Policy Regarding Projects Co-Incident with Other Existing Federal/State Commitments

In situations where proposed ARPA-funded project areas overlap or touch upon project areas where there are existing federal or state broadband infrastructure funding commitments, The Office of Broadband will evaluate such instances on a case-by-case basis, as described below.

The TNECD Broadband Office will consider funding projects which are incident to or which share equipment or facilities with areas funded by other federal programs, subject to certain requirements. In areas where there is an existing enforceable federal or state funding commitment for service that meets or exceeds 100 Mbps download by 20 Mbps upload, grantees must ensure that ARPA funded projects address an identified need for additional broadband investment that is not met by these existing federal or state commitments. Grantees must also ensure that ARPA funds will not be used for costs that will be reimbursed by the other federal or state funding streams absent a demonstration that each of its projects provides additional public benefits and that the additional public funding used for deployment of projects to those areas is justified. The Office of Broadband will consider funding a reasonable and proportional share of equipment and facilities used in common between projects upon a request of the applicant and submission of the combined costs of the common network elements, with a proposed cost share. Cost sharing must also remain consistent with the requirements of other federal programs. Grantees may use all available state and federal datasets in making this justification.

#### Restrictions on Uses of SLFRF Funds<sup>15</sup>

The following uses of SLFRF funds by Subrecipients are already largely excluded under the State's program procedures, however the following Federal restrictions shall apply regardless:

- SLFRF funds may not be deposited into a pension fund;
- SLFRF funds may not be used to offset a reduction in net tax revenue caused by recipient's change in law, regulation, or administrative interpretation;
- SLFRF funds may not be used as non-Federal match where prohibited; and
- SLFRF funds may not be used directly to service debt, satisfy a judgment, or contribute to a "rainy day" fund

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<sup>14</sup> Treasury Capital Projects Fund Guidance (September 2021), p.4, and SLFRF Final Rule at p.298.

<sup>15</sup> SLFRF Final Rule, (January 27, 2022), pgs. 9-10.

## Funds Must Be Used for Eligible Purposes<sup>16</sup>

Recipients and subrecipients must maintain procedures for obtaining information to show beneficiary/subrecipient/contractor eligibility, including a valid SAM.gov registration.

## Procurement Requirements – All Grantees

Related to documentation required in the Grantee's Grant Agreement with the TNECD, Broadband Office, all grantees shall supply their organization's procurement guidelines and a completed TNECD Procurement Form (Resources tab) to the Office of Broadband using the Title & Audit VI Formstack Submission found on the [TNECD Grants Administration website](#).

In addition, TNECD will require grantees to provide documentation of procedures used to procure any subcontractors associated with the awardees' project.

## Conflicts of Interest<sup>17</sup>

As per the Grantee's Grant Agreement with TNECD, neither the Grantees nor its officers or members, employees, or subgrantees may have an interest nor shall they acquire any interest, direct or indirect which would conflict or compromise in any manner the performance of services.

Also as part of its Agreement with TNECD, the Grantee shall periodically question its officers, members and employees concerning such interests and report in detail to TNECD if it discovers any such interest. Grantees will also establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal gain.

## Transactions with Affiliated Business Entities or Relatives:

Also as per the Grant Agreement, Subrecipients/Grantees must make a full disclosure in writing to TNECD of any corporation, partnership, sole proprietorship, or other business entity of any kind which is a wholly or partially owned entity of the Grantee or whose relatives supply goods or services to Grantee or work for or provide services to Grantee.

## Strong Practices in Construction

In general, Treasury encourages Subrecipients/Grantees to ensure Capital Projects incorporate strong labor standards, including labor agreements and local hire provisions that offer wages at or above the prevailing rate and include local hire provisions. Described below are requirements for grantees receiving State and Local Fiscal Recovery Program (SLFRF) and Capital Projects Fund (CPF) funding related to labor reporting. Federal Davis-Bacon Act prevailing wage rate requirements do not apply to projects funded solely by the Capital Projects Fund (CPF) program or the State and Local Fiscal Recovery Program (SLFRF). If, however, CPF or SLFRF funds are used in conjunction with another source of funds which requires Davis-Bacon Act compliance, then the project may be subject to compliance with the Davis-Bacon Act.

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<sup>16</sup>Treasury SLFRF Compliance and Reporting Guidance, Version 4.0 (June 10, 2022), p. 9.

<sup>17</sup>2 CFR §200.318(c).

## Quarterly Project and Expenditure Labor Reporting Requirements – Projects Above Certain Thresholds

The following reporting requirements apply to Grantees for SLFRF-funded projects over \$10 million in expected total cost, and for CPF-funded projects receiving \$5 million or more in CPF funding based on expected total cost:

1. Grantees may provide a certification that, for the relevant project, all laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as “baby Davis-Bacon Acts”).

\* If such certification is not provided, a Grantee must provide a project employment and local impact report detailing:

- The number of employees of contractors and sub-contractors working on the project;
  - The number of employees on the project hired directly and hired through a third party;
  - The wages and benefits of workers on the project by classification; and
  - Whether those wages are at rates less than those prevailing. (As determined by US Secretary of Labor in accordance with subchapter IV of chapter 31 of Title 40, United States Code (“Davis-Bacon Act”))
- Grantees must maintain sufficient records to substantiate this information upon request.

2. In addition, Grantees may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)).

- If the recipient does not provide the above certification, the recipient must provide a **project workforce continuity plan**, detailing:
  - How the recipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project, including a description of any required professional certifications and/or in-house training;
  - How the recipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project;
  - How the recipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including

descriptions of safety training, certification, and/or licensure requirements for all relevant workers (e.g., OSHA 10, OSHA 30);

- Whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and
  - Whether the project has completed a project labor agreement.
3. Grantees will also report on whether the project prioritizes local hires.
  4. Grantees will report on whether the project has a **Community Benefit Agreement**, with a description of any such agreement.

### Completion for Construction

Whether funded by Capital Projects Funds (CPF) or State and Local Fiscal Recovery funds (SLFRF), depending on the program the grantee is participating in, as outlined in the Program Procedures and the Grant Disbursement agreement between Grantees and projects must reach completion within a certain timeframe.

For SLFRF funded projects, TNECD requires projects to be completed before the Contract End Date (August 2025). TNECD has designed the timeframe to allow for up to a 12-month extension, to not exceed August 2026. Per federal guidelines, these funds must be expended by December 31, 2026.

### Reporting Requirements

Grantees shall submit Quarterly Project and Expenditure Reports through the Formstack Submission Form found on the Resources tab of the [TNECD Rural Development Grant Administration website](#). As this information is due from the State to the Treasury within 30 days following the end of the quarter, Grantees must submit these reports to the State prior to that time. As such, the TNECD Broadband Office will require that subrecipients provide Quarterly Reports no later than five (5) business days following the end of the quarter to the TNECD Broadband Office. The specific due dates can be found in the following schedule:

Report	Year	Quarter	Period Covered	Due Date
1	2023	1	January 1 - March 31	April 3, 2023
2	2023	2	April 1 - June 30	July 3, 2023
3	2023	3	July 1 - September 30	October 3, 2023
4	2023	4	October 1 - December 31	January 4, 2024
5	2024	1	January 1 - March 31	April 3, 2024
6	2024	2	April 1 - June 30	July 3, 2024
7	2024	3	July 1 - September 30	October 2, 2024
8	2024	4	October 1 - December 31	January 3, 2025
9	2025	1	January 1 - March 31	April 2, 2025
10	2025	2	April 1 - June 30	July 3, 2025
11	2025	3	July 1 - September 30	October 3, 2025
12	2025	4	October 1 - December 31	January 5, 2026

In general, Quarterly Reports cover the following information about awarded projects:

- General information identifying the report (date, quarter ending)
- Completion status
- Gross Revenues from Federal funding
- Key metrics of the project (miles of plant; addresses passed)
- Project Timelines
- Service of targeted addresses/speeds
- Types of addresses served (residential/business)
- Charges for service
- Program income
- Expenditure information
- Project accomplishments and key milestones
- Project progress/status
- Compliance of project with applicable Federal/State labor laws

This information is likely subject to be updated as TNECD finalizes the reporting process.

### State Broadband Reporting Requirements

Subrecipients that receive any State or Federal moneys, and which have used that money to install infrastructure used for broadband services, must provide information the TNECD Broadband Office on an annual basis.<sup>18</sup> In particular, awardees must agree to provide information about broadband availability, pricing, and speeds. Address-level reporting will be required immediately for grant-funded projects but may be deferred for non-grant funded projects to allow coordination with the already-launched Federal Communications Commission Digital Opportunity Data Collection Initiative.

## Matching Funds Requirements

For TNECD grantees, matching funds must be spent by applicant prior to reimbursement by grant funds. Match must be spent on allowed expenditures.

## Civil Rights Compliance<sup>24</sup>

Subrecipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities.

As agreed to in its Grant Distribution Agreement with TNECD, the Subrecipient/Grantee shall comply with all Federal and State laws, rules and regulations that prohibit any unlawful discrimination or violations of civil rights. These include but are not limited to:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin;<sup>25</sup>
- The requirements of any other nondiscrimination statute(s) which may apply to this grant. The Grantee shall insert a similar provision in all subcontracts and subawards for activities covered under its Grant Agreement.

Treasury's implementing regulations,<sup>33</sup> and the Department of Justice (DOJ) regulations, Coordination of Non-discrimination in Federally Assisted Programs, provide for the collection of data and information from Recipients.<sup>34</sup> In order to carry out its reporting responsibilities to the Treasury under Title VI of the Civil Rights Act, the State will collect and review information from subrecipients/grantees to ascertain their compliance with the applicable requirements before and after providing financial assistance.

Among the information which Treasury will request of Recipients, and which may in turn be requested of subrecipients are as follows:<sup>35</sup>

- (1) The manner in which services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination;
- (2) The population eligible to be served by race, color and national origin;
- (3) Data regarding covered employment, including use or planned use of bilingual public-contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English;
- (4) The location of existing or proposed facilities connected with the program, and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any persons on the basis of prohibited discrimination;
- (5) The present or proposed membership, by race, color and national origin, in any planning or advisory body which is an integral part of the program;
- (6) Where relocation is involved, the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color or national origin.

## Recoupment

Failure to comply with the compliance and reporting obligations under the Program may result in recoupment of funds per Treasury guidance.<sup>59</sup>

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<sup>24</sup> Capital Projects Fund Treasury Guidance (September 2021), p.19-20; Treasury SLFRF Guidance, (Version 4.0, June 10, 2022) p. 12.

<sup>25</sup> P.L. 88-352.

<sup>26</sup> 20 U.S.C. §§1681 - 1683, and 1685-1686.

<sup>27</sup> 29 U.S.C. §794.

<sup>28</sup> 42 U.S.C. §§6101-6107.

<sup>29</sup> P.L. 92-255.

<sup>30</sup> P.L. 91-616.

<sup>31</sup> 42 U.S.C. §§290 dd-3 and 290 ee-3.

<sup>32</sup> 42 U.S.C. §§3601 et seq.

<sup>33</sup> 31 C.F.R. part 22.

<sup>34</sup> See 28 C.F.R. 42.406.

<sup>35</sup> Per 28 CFR 42.406(a-c).



## Additional Requirements Applicable to Grantees Other than Private, For-Profit Organizations

NOTE: In general, except where otherwise noted, references to the Uniform Guidance (2 CFR 200) apply only to non-Federal entities, defined as a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

As such, where the term, “non-Federal entity” is used, it is referring to the entities listed above, and does not refer to private, for-profit subrecipients/grantees.

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<sup>59</sup> Coronavirus SLFRF Interim Final Rule (May 17, 2021), p.26811.

## Contract Work Hours/ Safety Standards<sup>60</sup>

All non-Federal entity contracts made by subrecipients/grantees in excess of \$100,000 involving mechanics or laborers must include a provision for compliance with certain provisions of the Contract Work Hours and Safety Standards Act, 40 USC 3702 and 3704, as supplemented by the Dept. of Labor regulations (29 CFR Part 5).

## Audits

For Grantees other than private, for-profit subrecipients, Subpart F – Uniform Guidance Audit Requirements implementing the Single Audit Act, shall apply.<sup>61</sup> Subrecipients must comply with all audit requirements (as required by Uniform Guidance Subpart F, see attached Appendix A below) when subrecipient’s Federal awards during fiscal year equal or exceed threshold in §200.501 (\$750,000). For a summary of the Uniform Guidance Audit Requirements, please refer to the attached Appendix A. The full Treasury Audit requirements section can be referred to in 2 CFR §200.500-§200.520.<sup>62</sup>

As outlined in the Grant Agreement with TNECD, non-Federal entity Grantees are responsible for procuring and arranging for annual audits and must follow applicable general procurement standards (2 CFR Section 200.318 through 200.327. Grantees will further comply with the Federal requirements of 2 CFR 200 Subpart F as may be applicable; the State accountability requirements of the State of Tennessee can be found on the [Department of Finance and Administration’s website](#).

In its SLFRF and CPF Compliance Supplements, Treasury has identified a Matrix of Compliance Requirements which apply to these programs.<sup>63</sup> Auditors must identify the compliance requirements subject to the audit for the relevant program and then determine which are likely to have a direct and material effect on the federal program of the auditee.

Treasury has developed an alternative approach which is available for SLFRF Grantees that would otherwise not be required to undergo an audit if it were not for their SLFRF-funded Treasury award.<sup>64</sup> Under its authority 2 CFR section 200.102(a), OMB is authorizing the use of an alternative compliance examination engagement in accordance with the Government Accountability Office’s Government Auditing Standards in lieu of a full single audit or program-specific audit as required per 2 CFR 200, Subpart F. The alternative approach along with the criteria for eligible recipients are detailed in the Part 4 – Section IV, “Other Information” section of assistance listing 21.027 – Coronavirus State and Local

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<sup>60</sup> See 2 CFR 200 (Uniform Guidance) Appendix II.

<sup>61</sup> 2 CFR §200.500 et seq. (Uniform Guidance) and Appendix A summary.

<sup>62</sup> See also OMB Compliance Supplements for audits of Federal Funds and related guidance (<https://www.whitehouse.gov/omb/office-federal-financial-management/>) and Federal Audit Clearinghouse (<https://facweb.census.gov/uploadpdf.aspx>) for examples and single audit submissions.

<sup>63</sup> See 2022 SLFRF Compliance Supplement, April 2022, p. 4-21.027-4 (<https://home.treasury.gov/system/files/136/21.027-SLFRF-2022-Compliance-Supplement.pdf>), and 2022 CPF Compliance Supplement. April 2022, p. 4-21.029.3 (<https://home.treasury.gov/system/files/136/21.029-CPF-2022-Compliance-Supplement.pdf>)

<sup>64</sup> 2022 SLFRF Compliance Supplement, April 2022, p. 8-VII-5 (Appendix VII)

Recovery Funds.<sup>65</sup> Eligibility to use the alternative approach is limited to Grantees that expend \$750,000 or more in federal awards during the Grantee's fiscal year, and which meet **both** of the criteria below:

- 1.) Grantee's total SLFRF award is at or below \$10 million; and
- 2.) Other federal funds the Grantee expended (not including their SLFRF award funds) are less than \$750,000 during the Grantee's fiscal year.

### Equipment and Real Property Management<sup>66</sup>

In general, Equipment and real property acquired under this program must be used for the originally authorized purpose, and any equipment and real property acquired under the SLFRF program will vest in the Subrecipient/Grantee.

#### Real Property

As specified and agreed to in the Grantee's Grant Agreement with the State, non-Federal entity Grantees must comply with the property standards as set forth in the Uniform Guidance.<sup>67</sup> Title to real property acquired with Treasury award funds vests in the Subrecipient/Grantee acquiring that real property.<sup>68</sup> It must be used for the originally authorized purpose as long as needed for that purpose. The Treasury may require the Grantee to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award.<sup>69</sup> When that real property is no longer needed, the subrecipient must get disposition instructions from the Federal awarding agency (Treasury) or the pass through entity (TNECD, Broadband Office). Some possible options include the recipient retaining title after compensating the Treasury; selling the property and compensating the Treasury; or transferring title to the Treasury or a third party approved by the Federal awarding agency.

#### Equipment<sup>70</sup>

Title to equipment acquired with Treasury award funds will vest upon acquisition in the non-Federal entity Subrecipient/Grantee, provided that the subrecipient uses the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project; the awardee does not encumber the property without approval of the Treasury or TNECD, Broadband Office (Recipient); and provided that the grantee uses the equipment in the program or project for which it was acquired as long as needed for the original program/project.

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<sup>65</sup> 2022 SLFRF Compliance Supplement at p. 4-21.027-10 et seq.

<sup>66</sup> Uniform Guidance, Subpart D, §§200.311, 200.313.

<sup>67</sup> 2 CFR 200.310-200.316.

<sup>68</sup> 2 CFR 200.311 and 2 CFR 200.313.

<sup>69</sup> 200 CFR 200.316.

<sup>70</sup> 2 CFR 200.313.

## Management Requirements<sup>71</sup>

Subrecipients/grantees must maintain property records that include the following information:

- Description of the property;
- A serial number or other identification number;
- The source of funding for the property (including the FAIN (Federal Award ID number)),
- Who holds title to the property;
- The acquisition date;
- Cost of the property;
- The percentage of Federal participation in project costs;
- Location;
- Use and condition of the property;
- Any ultimate disposition data, including:
  - Date of disposal, and
  - Sale price of the property
- Physical Inventory - A physical inventory must be taken and results reconciled with the property records at least once every two years.
- Control System – Must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property, and any loss/damage/theft must be investigated.
- Adequate Maintenance - Procedures must be developed to keep the property in good condition
- Sale - If the Subrecipient/Grantee is required to sell the property → proper sales procedures must be established to ensure the highest possible return

## Disposition of Equipment Requirements<sup>72</sup>

When original or replacement equipment acquired under a Treasury award is no longer needed for the original project or program or for other activities currently or previously supported by the Treasury, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the Subrecipient/Grantee must request disposition instructions from the Treasury if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Treasury disposition instructions:

- Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold, or otherwise disposed of with no further responsibility to the Federal awarding agency.
- Items of equipment with a current per-unit fair market value in excess of \$5,000 may be retained by the Subrecipient/Grantee or sold. The Treasury is entitled to an amount

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<sup>71</sup> Uniform Guidance, §200.313(d).

<sup>72</sup> Uniform Guidance, §200.313(e).

calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Treasury may permit the Subrecipient/Grantee to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

- The Subrecipient/Grantee may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the Subrecipient/Grantee must be entitled to compensation for its attributable percentage of the current fair market value of the property.
- In cases where the Subrecipient/Grantee fails to take appropriate disposition actions, the Federal awarding agency may direct the grantee to take disposition actions.

### Procurement<sup>73</sup>

When procuring property or services with Federal funds, subrecipients/grantees other than for-profit, private grantees must follow procurement standards as outlined in the Uniform Guidance. For a summary of the Uniform Guidance Procurement requirements (2 CFR §§200.318-200.327), please see the attached summary in Appendix B.

### Program Income Requirements<sup>74</sup>

Non-Federal entity subrecipients/grantees should calculate, document, and record the organization's "program income".<sup>75</sup>

Program income includes but is not limited to:

- Income from fees for services performed;
- Use or rental of real or personal property acquired under Federal awards; and
- Principal and interest on loans made with Federal award funds

Program income excludes:

- Interest earned on advances of Federal funds, rebates, credits, discounts; or
- Interest on rebates, credits, or discounts
- **Governmental Revenues.** Taxes, special assessments, levies, fines unless specifically identified in the Federal award or Federal regulations as program income (Uniform Guidance §200.307(c))

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<sup>73</sup> Per Uniform Guidance, §§200.317-200.327—see attached Appendix B for summary of the Uniform Guidance Procurement Guidelines.

<sup>74</sup> See §200.307 Uniform Guidance for more detail on this requirement.

<sup>75</sup> SLFRF Treasury Compliance and Reporting Guidance (Version 4.0, June 10, 2022), p. 10.

- **Property.** Proceeds from the sale of real property, equipment, or supplies are not program income.

In recent guidance related to SLFRF awards, Treasury has stated that recipients may add program income to the Federal award. Further under Treasury guidance, any program income generated from SLFRF funds must be used for the purposes and under the conditions of the Federal award.<sup>76</sup>

Additionally, for CPF-funded grantees, Treasury has also stated that it encourages grantees to use program income to defray program costs where appropriate.<sup>77</sup>

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<sup>76</sup> Per 2 CFR 200.307, and Coronavirus State and Local Fiscal Recovery Funds, Final Rule: Frequently Asked Questions as of April 27, 2022, FAQ #13.11.

<sup>77</sup> Coronavirus Capital Projects Fund Compliance and Reporting Guidance For States, Territories, and Freely Associated States, *Draft for Public Comment, May 2022*, p.13)

Appendix A – Summary of Uniform Guidance Audit Requirements  
Subpart F

## Subpart F – Audit Requirements (Uniform Guidance) (2 CFR §200.500 et seq.)

### Applicability

Non-Federal entity Recipients and subrecipients that expend \$750,000 or more during non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit. Non-Federal Entities are defined as a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient. As such, for-profit entities that receive SLFRF subawards are not subject to Single Audit requirements. However, they are subject to other audits as deemed necessary by authorized governmental entities, including Treasury, the GAO, and Treasury's OIG.<sup>78</sup>

### Types

#### Single Audit

- **Single Audits** – Must be conducted in accordance with §200.514.<sup>79</sup>

#### Program Specific Audit

- **Program-specific Audit:** when auditee expends Federal awards under only one program (excluding R&D), and the Federal program's statutes, regulations, or terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted.<sup>80</sup>

### Exemptions from Audit Requirements

If a non-Federal entity expends less than \$750,000 during that non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in §200.503. However, records must be made available for review or audit.

### Auditee Definition

Auditees may be a recipient, subrecipient, and contractor simultaneously. Federal awards expended as a recipient or subrecipient are subject to audit. Payments for goods or services provided as a contractor are not Federal awards.<sup>81</sup>

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<sup>78</sup> Treasury SLFRF Guidance, p. 11, footnote 8.

<sup>79</sup> 2 CFR §200.501(b).

<sup>80</sup> See Uniform Guidance (2 CFR §200.507) for detail on program-specific audits.

<sup>81</sup> See §200.331 of Uniform Guidance for determining whether payments constitute Federal award or payment for goods/services.



## Auditee Responsibilities - Contractors

**Compliance for Contractors.** Generally, auditee's responsibility is just to ensure that contractor is responsible for program compliance. When procurement transaction relate to a major program, scope of the audit must include determining whether transactions are in compliance with Federal statutes, regulations, and terms and conditions of Federal awards.

## Pass-Through Entity (PTE) Responsibilities - For Profit Subrecipients

Pass-through entities are responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. An agreement with for-profit subrecipient must describe applicable compliance requirements. (Methods include pre-award audits, monitoring during agreement, post-award audits)<sup>82</sup>

## When is the Federal award Expended?

Must be based on when the activity related to the Federal award occurs.<sup>83</sup>

## Relation to other Audit Requirements

An audit conducted in accordance with this part must be in lieu of any financial audit of Federal awards which a non-Federal entity is required to undergo under any other Federal statute or regulation.<sup>84</sup>

## Audit Frequency

Audits required by this part must be performed annually, unless otherwise required by State, local, tribal constitution/statute.<sup>85</sup>

## Auditee Responsibilities<sup>86</sup>

Auditees are responsible for:

- Procuring/arranging for an audit<sup>87</sup>
- Preparing appropriate financial statements, including schedule of expenditures of Federal awards,<sup>88</sup>
- Following up and taking corrective action on audit findings, including preparation of a summary schedule of prior audit findings and corrective action plan (see §200.511(b) and (c),
- Providing the auditor with access to personnel, accounts, books, records, and other information needed

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<sup>82</sup> See also §200.332, Uniform Guidance.

<sup>83</sup> Uniform Guidance, §200.502.

<sup>84</sup> §200.503.

<sup>85</sup> §200.504.

<sup>86</sup> §200.508

<sup>87</sup> See §200.509

<sup>88</sup> See §200.510

## Auditor Selection<sup>89</sup>

In selecting an auditor, the Auditee must follow Uniform Guidance Procurement standards (See attached summary of Uniform Guidance Procurement Standards, Appendix B below).<sup>90</sup> In requesting proposals for audit services, objectives/scope of audit must be made clear and non-Federal entity must request copy of audit organization's peer review report. In addition, the Auditee must make efforts to utilize small business, minority-owned firms, and women's business enterprises under §200.321.

## Restrictions on Auditors – Indirect Cost Proposals

If an auditor prepares an indirect cost proposal or cost allocation plan, it may not also be selected to perform the audit when indirect costs recovered by auditee exceed \$1 million.

## Federal Auditors

Federal auditors may perform all or part of the work under this part.

## Auditee Requirements - Financial Statements<sup>91</sup>

The Auditee must prepare a financial statement reflecting:

- Financial Position,
- Results of operations/changes in net assets,
- Cash Flows for fiscal year audited (where appropriate)
- Financial statements must be for the same organizational unit and fiscal year that is chosen to meet this part
- Non-Federal entity-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with §200.514(a) and prepare separate financial statements

## Auditee Requirements - Schedule of Expenditures of Federal Awards

The Auditee must also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements which must include the total Federal awards expended.<sup>92</sup>

The Minimum Schedule requirements are as follows:

- A list of individual Federal programs by Federal Agency,
- For Federal awards received as a subrecipient, the name of the Pass-through Entity and ID number assigned by the PTE.
- Provide total Federal Awards expended for each individual Federal program and Assistance Listings Number (ALN) or other ID number if ALN is not available
- Include total amount provided to subrecipients from each Federal program

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<sup>89</sup> §200.509

<sup>90</sup> See Appendix B summary as well as Uniform Guidance §§200.317-200.327 for full requirements.

<sup>91</sup> §200.510

<sup>92</sup> §200.502

- For loan/loan guarantee programs, identify in notes to schedule the balances outstanding at the end of the audit period.<sup>93</sup> In addition, include the total Federal awards expended for loan/loan guarantee programs in the schedule.
- Inclusion of notes that describe significant accounting practices used in preparing schedule, and note whether or not auditee elected to use 10% de minimis cost rate under §200.414

#### Auditee Follow-up Requirements<sup>94</sup>

The Auditee is responsible for follow-up and corrective action on all audit findings. Auditee must prepare a summary schedule of prior audit findings. The Auditee must also prepare a corrective action plan for current year audit findings.<sup>95</sup>

#### Audit Report Submission<sup>96</sup>

The audit must be completed and data collection and reporting package submitted within the earlier of 30 calendar days after receipt of auditor's report(s), or nine months after the end of the audit period. If due date falls on Saturday, Sunday, or Federal holiday, reporting package is due next business day.

#### Public Inspection/Confidentiality

Auditees must make copies available for public inspection unless restricted by Federal statutes or regulations. Auditees/auditors must ensure their parts of reporting package do not include protected personally identifiable information.

#### Collection of Audit Information

The Federal Audit Clearinghouse (FAC) is the repository for audit reporting packages and the data collection form.

#### Required Data

The auditee must submit data elements via the Federal Audit Clearinghouse (FAC) Internet Data Entry System.<sup>97</sup>

#### Signed Statement

A senior level representative of the auditee (e.g. state controller, director of finance, CEO, or CFO) must sign a statement to be included as part of data collection stating:

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<sup>93</sup> §200.502(b)

<sup>94</sup> §200.511

<sup>95</sup> See §200.511(b) and (c) of the Uniform Guidance for more detail on summary schedule and corrective action plan requirements.

<sup>96</sup> §200.512

<sup>97</sup> <https://facides.census.gov/Account/Login.aspx>

- a. Auditee complied w/ requirements of this part,
- b. Data were prepared in accordance with this part,
- c. The reporting package does not include protected personally identifiable information, and
- d. The information included in its entirety is accurate and complete; and
- e. That the FAC is authorized to make the reporting package and form publicly available on a website.

**EXCEPTION:** If auditee is Indian tribe or tribal organization, they have the option of not including the authorization in the statement (e) above for the FAC to make the reporting package and form publicly available on a website. If this option is exercised, auditee is responsible for submitting reporting package directly to any pass-through entities through which it has received a Federal award.

**NOTE:** Unless restricted by Federal statute or regulation, if auditee opts not to authorize publication, it must make copies available for public inspection

### Auditor Responsibilities

Using data elements below, auditor must complete applicable data elements of the data collection form and must sign a statement indicating:

- The source of the information included in the form,
- The auditor's responsibility for the information,
- That the form is not a substitute for the reporting package in paragraph (c) of this section, and
- That the content of the form is limited to the collection of information prescribed by OMB

### Audit Reporting Package Requirements

#### **Reporting Package Must include:**

- (1) Financial statements and schedule of expenditures of Federal awards discussed in §200.510(a) and (b);
- (2) Summary schedule of prior audit findings discussed in §200.511(b);
- (3) Auditor's reports discussed in §200.515; and
- (4) Corrective action plan (§200.511(c))

### Auditee Submission Requirements

**Submission to FAC.** Auditee must electronically submit to the FAC: (1) the data collection form, and (2) the reporting package

**Requests for Management Letters issued by Auditor.** If Federal Agency of pass-through entity requests, auditees must submit a copy of management letters issued by auditor

### Report Retention - Auditees

**Report retention requirements.** Auditees must keep one copy of the data collection form and one copy of the reporting package on file for three years from date of submission to the FAC.

## Auditor Requirements<sup>98</sup>

### General

Audit must be conducted in accordance with GAGAS (Generally Accepted Government Auditing Standards). The Auditor must make determination that auditee statements are presented fairly as well as schedule of expenditures is stated fairly.

Auditors must report significant deficiencies or material weakness in accordance with §200.516, assess related control risks and consider whether additional compliance tests are required because of ineffective internal control.

**Compliance.** In addition to GAGAS, auditor must determine whether auditee complied with Federal statutes, regulations, and terms and conditions of Federal awards

**Audit follow-up.** Auditor must follow up on prior audit findings, assess reasonableness of summary schedule of prior audit findings prepared by auditee under §200.511(b) and report any material misrepresentations of status

**Data Collection Form.** As required by §200.512(b)(3), auditor must complete and sign specified sections of the data collection form.

### Auditor Reporting Requirements<sup>99</sup>

Auditor reports can be in a different form than provided in this section but must state that audit was conducted in accordance with this part and include:

1. Financial Statements
2. Report on internal control over financial reporting and compliance
3. A report on compliance for each major program and a report on internal control over compliance
4. A schedule of findings and questions costs which must include:
  - (1) A summary of the auditor's results, which must include:
    - (i) Type of report auditor issued on whether FS audited were prepared in accordance with GAAP;
    - (ii) internal control were disclosed by the of financial statements;

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<sup>98</sup> Uniform Guidance §§200.514-200.521.

<sup>99</sup> See Uniform Guidance §200.515 for additional details on the below requirements.

- (iii) A statement as to whether audit disclosed any noncompliance that is material to the financial statements of the auditee;
- (iv) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control over major programs were disclosed by audit

### Additional Requirements for Auditors<sup>100</sup>

- **§200.516 – Audit Findings** (For Detailed requirements for Auditor in a schedule of findings and questioned costs)
- **§200.517 – Audit Documentation**
- **§200.518 – Major Program Determination**
- **§200.519 – Criteria for Federal Program Risk**
- **§200.520 – Criteria for a Low-Risk Auditee**
- **§200.521 – Management Decision**

### Pass-through Entities Requirements

Pass-through entities (Definition: non-Federal entities that provide subawards to a subrecipient to carry out part of a Federal program): Under §200.332(d), the PTE must be responsible for issuing a management decision for audit findings that relate to Federal awards it makes to subrecipients.

- Time Requirements: The Federal awarding agency or PTE responsible for issuing a management decision must do so within 6 months of acceptance of the audit report by the FAC. The auditee must initiate and proceed with corrective action as rapidly as possible and corrective action should begin no later than upon receipt of the audit report.
- Reference numbers. Management decisions must include the reference numbers the auditor assigned to each audit finding in accordance with §200.516(c)

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<sup>100</sup> Refer to relevant Uniform Guidance sections listed for detail on these requirements.

Appendix B – Summary of Uniform Guidance Procurement  
Requirements (2 CFR §200.317-§200.327)

## Procurement Requirements (Uniform Guidance)(2 CFR §200.317-200-327)

### General

**NOTE: The following procurement requirements (2 CFR 200.317-200.327) apply only to non-Federal Entities, defined as a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient. As such, they are inapplicable to private, for-profit subrecipients/grantees.**

### Procurement – Competition Requirements<sup>101</sup>

All procurement transactions for acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition.

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.

A non-Federal entity must have written procedures for procurement transactions and ensure that all solicitations:

- Have clear and accurate description of technical req's for material/product/service to be procured; and
- Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals

### Procurement - Methods<sup>102</sup>

#### Informal Procurement

If the value of the procurement for property or services under a Federal award does not exceed the “simplified acquisition threshold” (SAT) or a lower threshold → formal procurement methods are not required.<sup>103</sup>

#### Formal Procurement

Sealed bid processes and publicized proposal requests are required as well as public advertisement are required unless a non-competitive procurement is allowed.<sup>104</sup>

#### Non-Competitive Procurements

Recipients may conduct non-competitive procurements under the Uniform Guidance if:

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<sup>101</sup> Uniform Guidance §200.319.

<sup>102</sup> §200.320

<sup>103</sup> See Uniform Guidance, §200.1 for definition of Simplified Acquisition Threshold.

<sup>104</sup> Uniform Guidance §200.320(c)



- The Item in question is below the micro-purchase threshold;
- The Item is only available from a single source;
- Public exigency/emergency doesn't permit delay; OR
- After solicitation of a number of sources, competition is determined inadequate

### Contracting with Small, Minority-Owned, and Women-owned Businesses<sup>105</sup>

Non-Federal entities must take several affirmative steps in the procurement process, as detailed in the Uniform Guidance For Federal Awards, in particular:

- Placing small, minority, and women's businesses on solicitation lists,
- Assuring that small, minority, and women's businesses are solicited whenever they are potential sources,
- When economically feasible, dividing requirements into smaller tasks/quantities to permit maximum participation by s/m/w businesses,
- Establishing delivery schedules where a requirement permits, which encourage participation by s/m/w businesses,
- Using services/assistance of the Small Business Administration and the Minority Business Development Agency of Dept. of Commerce; and
- Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps (1-5 above)

### Domestic Preferences for Procurements<sup>106</sup>

To the greatest extent practicable, non-Federal entity recipients should provide preference for purchase, acquisition, use of goods, products, or materials produced in the United States. The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products.

### Procurement of Recovered Materials<sup>107</sup>

Non-Federal entities that are state agencies or local agencies of a political subdivision of a state and its contractors must comply with §6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

Requirements of 6002 include:

- Procuring only items designated in EPA Guidelines (40 CFR Part 247) that contain the highest percentage of recovered materials practicable where purchase price of the item exceeds

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<sup>105</sup> Uniform Guidance, §200.321.

<sup>106</sup> Uniform Guidance, §200.322.

<sup>107</sup> Uniform Guidance, §200.323

- \$10,000 or 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 EPA guidelines

## Contract Cost and Price<sup>108</sup>

### Costs – In General

Non-Federal entities must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. In addition, non-Federal entities must make independent estimates before receiving bids or proposals and must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. Consideration must be given to:

- The complexity of the work to be performed,
- The risk borne by the contractor,
- The contractor's investment,
- The amount of subcontracting,
- The quality of its records of past performance, and
- Industry profit rates in the surrounding geographical area for similar work

### Estimated Costs

Estimated Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E of the Uniform Guidance.<sup>109</sup> A non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

### Costs Plus Percentage of Construction - Prohibited

Cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

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<sup>108</sup> Uniform Guidance §200.324.

<sup>109</sup> Refer to Uniform Guidance §200.400 et seq.

## Review by Federal Awarding Agencies or Pass-Through Entities<sup>110</sup>

Non-Federal entity recipients must make certain items available upon request by the Federal Awarding Agency or Pass-Through Entity:

- Technical Specifications on proposed procurements where requested;
- Pre-procurement review, procurement documents, requests for proposals (RFPs), independent cost estimates.
  - **EXCEPTION from pre-procurement review:** If non-Federal entity requests and receives certification of its procurement system by the Federal awarding agency, or self-certifies its own system with written assurances to the Federal agency citing specific policies, procedures, regulations, or standards, and has its system available for review.

## State Procurement Requirements for non-Federal Entities

- The State of Tennessee's procurement procedures manual and specific policies can be found in greater detail on the [Department of General Service's website](#).

NOTE: Any attempts by the Grantee to segregate the Project into sections in order to circumvent competitive procurement may be cause for termination of its Grant Agreement with TNECD.

- The Grantee shall have available upon request for review by TNECD or its designated representative, bid documents and other evidence of compliance with these procedures. The resolution of bid and contract disputes is the responsibility of the Grantee.

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<sup>110</sup> Uniform Guidance §200.325.

## Bonding Requirements<sup>111</sup>

As otherwise required by law, a grant that requires the contracting or subcontracting for construction or facility improvements under \$25,000 shall provide for the Grantee to follow local or State requirements relating to bid guarantees, performance bonds, and payment bonds provided that the Grantee's and State's interest is adequately protected and that such contracts can be executed in a timely manner; otherwise, bonding requirements shall be the same as for contracts exceeding \$25,000. Consistent with 2 CFR 200.326, if a contract or subcontract exceeds \$25,000, the minimum bonding and insurance requirements shall be as follows:

For construction/facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (SAT), either the State or the Federal awarding agency will make a determination that the Federal interest is adequately protected by the non-Federal entity's bonding policy/requirements. If this determination is not made, the minimum requirements must be:

- A bid guarantee from each bidder equivalent for 5% of the bid price.
  - Bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- A performance bond on the part of the contractor for 100% of the contract price.
- A payment bond on the part of the contractor for 100% of the contract price.

## Contract Provision Requirements for non-Federal Entity Grantees<sup>112</sup>

**NOTE: The contract provision requirements in the Uniform Guidance (Appendix II to 2 CFR 200) apply only to non-Federal Entities, defined as a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient. As such, they are inapplicable to private, for-profit subrecipients/grantees.**

Under the Uniform Guidance there are a number of contract provision requirements for recipients and the entities they contract with under Federal awards, including:

- **Breach/remedies. If a contract is for more than the simplified acquisition threshold (SAT),** it must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate;

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<sup>111</sup>

Uniform Guidance, §200.326.

<sup>112</sup> Uniform Guidance, §200.327 and Appendix II to Part 200.

- **Termination.** Contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including manner it will be effected and basis for settlement.
- **Equal Employment Opportunity clause requirement<sup>113</sup>**
- **Davis-Bacon Act Provision Requirement<sup>114</sup>.** When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include provision for compliance with Davis-Bacon Act. (See Appendix II to Uniform Guidance for details<sup>115</sup>)
- **Contract Work Hours and Safety Standards Act.** All contracts awarded by non-Federal entity in excess of \$100,000 that involve mechanics or laborers must include provision for compliance with the Act (See Appendix II of Uniform Guidance for further details).
- **Rights to Inventions Made Under a Contract of Agreement.<sup>116</sup>**
- **Clean Air Act and Federal Water Pollution Control Act.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water pollution Control Act. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- **Debarment and Suspension.** A contract award must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM) (<https://www.sam.gov>).
- **Byrd Anti-Lobbying Amendment.** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification.<sup>117</sup>
- **Procurement of Recovered Materials.** Non-Federal entities that are state agencies or agencies of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.<sup>118</sup>

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<sup>113</sup> See 2 CFR 200 (Uniform Guidance) Appendix II for details.

<sup>114</sup> Davis-Bacon federal prevailing wage rate requirements do not apply to projects funded solely by the Capital Projects Fund or State and Local Fiscal Recovery fund programs unless funds are used in conjunction with other federal source of funds which does require compliance with Davis-Bacon.

<sup>115</sup> Contract Provisions for Non-Federal Entity Contracts Under Federal Awards (Uniform Guidance)

<sup>116</sup> See Appendix II of Uniform Guidance for details.

<sup>117</sup> See Uniform Guidance, Appendix II for more detail on contents of certification

<sup>118</sup> See §200.323 Uniform Guidance for more detail on this requirement.

- **Prohibition on certain Telecommunications and Video Surveillance Services or Equipment**<sup>119</sup>
- **Domestic Preferences for Procurements.** Non-Federal entity should, to the greatest extent practicable under a Federal award provide preference for US-produced materials/products—these requirements must be included in all subawards and contracts<sup>120</sup>

### Procurement Recordkeeping Requirements

The non-Federal entity must maintain records sufficient to detail the history of procurement, including but not limited to:

- Rationale for method of procurement;
- Selection of contract type;
- Contractor selection or rejection; and
- Basis for the contact price

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<sup>119</sup> See §200.322 Uniform Guidance for more detail on this requirement.

<sup>120</sup> See §200.322 Uniform Guidance