American Rescue Plan Grant Implementation Guide

State Water Infrastructure Grant Program
August 2023

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Executive Summary

In February of 2022 the Tennessee's Department of Environment and Conservation (TDEC) released the ***Water Infrastructure Investment Plan*** to address the deployment of American Rescue Plan (ARP) State and Local Fiscal Recovery Fund (SLFRF or "Fiscal Recovery Fund") dollars toward water infrastructure projects. The ARP Fiscal Recovery Fund is a grant program that is funded through U.S. Treasury and was enacted to assist state, territorial, local, and Tribal governments across the country to address infrastructure, economic and health related issues that were highlighted due to COVID-19. TDEC includes three primary strategies for disbursing ARP funds as part of its Water Infrastructure Investment Program: formula-based Non-Competitive grants to counties and eligible cities; state-initiated strategic projects; and competitive grants to eligible Grantee stakeholders.

This implementation guidance provides details for awardee's of TDEC's $1 billion Non-Competitive, formula-based grants opportunity. Funds are made available through the State Water Infrastructure Grants (SWIG) program to be used for eligible drinking water, wastewater, or stormwater projects. This guidance document details contract, state, and federal requirements for Grantees to ensure compliance when executing projects using SWIG Non-Competitive grant funding. Grantees should also review this guidance for information on Grantee monitoring and risk assessments the state will conduct for each awardee.

Background

The ARP Non-Competitive grant application period closed November 1, 2022. Of the 95 counties and 272 cities allocated state ARP funds, 99% either applied for the use of funding or transferred their allocation to other eligible entities. To date, there is approximately $993 million dollars in requests representing nearly 1,100 projects, spread across drinking water, wastewater, and stormwater. Applicants were eligible to submit non-collaborative and collaborative grant proposals. Collaborative applicants consisted of one or more collaborative projects involving multiple entities working together for shared purposes and goals. Non-collaborative grant applicants also partnered with utilities and other municipalities, sharing funds to support independent projects. In fact, the level of partnership and intentional use of dollars to address water infrastructure critical needs across the state is unprecedented. This guidance is intended to assist entities participating in this unprecedented event meet all Subrecipient, or Grantee, monitoring and reporting requirements. This guidance should be used to support the effort of the lead applicant and all partners, responsible parties, and project owners participating in this grant program.

ARP Non-Competitive Grant Contract

The ARP Non-Competitive Grant contract is used for both collaborative and non-collaborative proposals. This base contract covers both the lead applicant and includes any partners, pass-throughs, and subrecipients. A copy of the ARP Non-Competitive Grant contract is provided in Appendix A of this document. Please review each section of the grant contract to ensure all parties associated with individual projects covered under the contract understand the terms and conditions that apply.

The grant contract is divided into five (5) primary sections:

- **Section A: Scope of Services and Deliverables** covers expectations of individual projects, like Asset Management Plans and final TN Infrastructure Scorecard summaries; this section also includes general construction conditions and permit requirements
- **Section B: Term of Contract** covers the start and end date of the contract and outlines the State's authority to use federal grant dollars
- **Section C: Payment Terms and Conditions** identifies the maximum liability of the contract, information on invoices, and details for the reimbursement process
- **Section D: Standard Terms and Conditions** covers typical conditions like lobbying, debarment, public accountability, termination options, and grant reports
- **Section E: Special Terms and Conditions** covers additional elements like Davis-Bacon, Equal Employment Opportunity, and domestic preference for procurements

Each section of the grant contract is not covered in detail in this guidance. The purpose of this guidance is to focus on the most critical and common areas of interest and concerns for Grantees. Any information not covered in this guidance, yet included in the grant contract, applies to all parties participating in the use of ARP funds through this grant offering.

Grantee Responsibilities

The grant contract is an enforceable contract from a federally funded award between a pass-through entity (TDEC) and a Grantee (city or county) to develop water infrastructure projects. When a Grantee receives ARP funds from TDEC, it creates responsibilities to report and provide information on the use of the funding, as well as a requirement for TDEC to monitor the awardees (See 2 CFR 200.331 for further guidance)[1]. For purposes of the TDEC ARP program, although 2 CFR 200 describes a "grantee" as the entity that is administering a federal program, the term "Grantee" in this document will refer to the TDEC grant awardees or "subrecipient".

[1] Per 200.331 Subrecipient and contractor determinations - A Grant Contract is for the purpose of carrying out a portion of a federal award and creates a federal assistance relationship with the subrecipient.

Grantee responsibilities include but are not limited to:

- Following federal laws and regulations, as the rules "flowdown" to the Grantee. For example, Grantees must comply with civil rights laws and ensure they are not prohibited from receiving grants or if they are suspended or debarred from receiving federal funds. GMSA grantee's status must be confirmed on Sam.gov
- Providing TDEC access to records and potential financial statements to determine compliance with federal requirements (§200.331(a)(5))
- Facilitating TDECs planned monitoring and oversight activities (e.g., on-site visits) (§200.331(e)(2))

Stakeholder Roles & Responsibilities

Grantee	Contractor(s)	TDEC
• Receives grant contract from a pass-through entity (TDEC); carries out the grant program on their behalf **Responsibilities:** 1. Execute the grant in compliance with the grant agreement 2. Monitoring the phases of the project lifecycle per the TDEC grant agreement Terms & Conditions 3. Ensuring work performed (e.g., procurement, contracting, oversight, etc.) follows state, local, and federal regulations, including continual monitoring of contractor performance, financial management, etc.	• An entity that receives a contract as defined in 2 CFR Parts 200.22 & 200.23 **Responsibilities:** 1. Performs the work to be completed on the project (e.g., planning, engineering, construction, administrative costs, etc.)	• Reviews and approves grant applications • Oversees the award of grant funds **Responsibilities:** 1. Reviewing/approving submitted project applications 2. Providing technical support, execution of program objectives and funding requirements 3. Conducting routine grantee monitoring (e.g., reviewing invoices, receipts, site inspections, etc.) 4. Providing funding on a reimbursement basis (e.g., upon approval of eligible project expenditures)

Figure 1 Stakeholder Roles & Responsibilities

Required Approvals

For the grant contract to become binding, each grant contract must be signed by both the Grantee and the TDEC Commissioner. Grantees should review, approve, and execute the grant contract in accordance with applicable Tennessee laws and regulations and their specific local policies and procedures.

Only project scopes and budgets included in an approved grant contract and meeting other eligibility criteria as detailed in the Reimbursement section of this document, will be eligible for reimbursement under this program.

Modifications and Amendments

The ARP Non-Competitive grant contract was created through a process known as a Delegated Grant Authority. In addition, TDEC requested nine (9) Rule Exception Requests to the base contract template to fit the unique needs of the ARP funding. Elements like invoicing for cost incurred or allowing the contracts to be back dated to March 3, 2021 required the approval of a committee and review by TDEC's Office of General Council (OGC). Further, the contract approval process conducted by OGC was completed in the summer of 2022. This upfront review and approval of the structure and content of the grant contract will allow us to bypass the intensive review every contract would have after the application was approved, but prior to contract execution. The grant contracts are largely identical. Only the selection of project award types, water infrastructure types, and funding amounts are different. Because of this, modifications ***cannot*** be made to the grant contract for scopes of services or specific conditions. The only conditions that may be modified upon request are the overall budget, change in water infrastructure type being covered, or potentially project award type. In the event a modification to these designated areas is required, the Grantee should ***notify TDEC before September 30, 2024***. TDEC will evaluate the request and determine if a modification is to be granted. Further details and timelines on a modification will be provided as needed.

Partners, Responsible Parties, Project Owners, and Subcontracting

All participating entities (collaborative and non-collaborative) are required to be in compliance with the ARP grant requirements. This means that regardless of the arrangement entered into between municipalities, all ARP grant requirements should be followed in managing the grant and associated projects. Grantees cannot assign their grant contract or enter a subcontract for its responsibilities. If an assignment of grant responsibilities is passed to another entity, it is required that the Grantee obtain prior written approval from TDEC. If approved, certain grant contract terms must flow down to the subcontractor. Additionally, the Grantee will remain responsible for all work performed under the grant contract.

Scopes of Services and Deliverables

The ARP Non-Competitive Grant contract for every grantee is nearly identical. Funding requests and selection of specific water infrastructure types and project award types are unique to each contract. Section A of the grant contract details the scopes of services expected of utilities. The contract was designed to cover all entities and maintain enough flexibility such that if Grantees request a project modification, once the project modification is approved, no amendment to the contract will be needed.

All deliverables, including Preliminary Engineering Reports, Critical Needs Plans, Asset Management Plans, and all other deliverables will be required to be uploaded to TDEC's Grant Management System (GMS). Updates to the appendices of this document will be made when the GMS activity is published to the ARP application and ready for Grantee use. Additional instructional videos will be uploaded to the TDEC ARP resources website.

Deliverables by Project Award Type

Each grant contract is unique with a variety of partners, project owners, collaborations, and goals. Therefore, the deliverables required vary depending on the make-up of water infrastructure utilities, each system's critical needs, and the project award type the utility selected. In addition, every utility that participates in the Non-Competitive grant program must submit:

- An asset management plan (AMP) or AMP certification
- A capital improvement plan, business action plan, or prioritized list of critical needs developed from the Tennessee Asset Management Templates available in Appendix A
- A final Tennessee Infrastructure Scorecard Summary once projects are complete

Any utilities with significant non-compliance issues are considered to have a critical need. Significant non-compliance is identified as having an open, Division of Water Resources issued Compliance and Enforcement Order with the State of Tennessee. Orders and Cases are maintained on TDEC's searchable database. If a grant applicant has significant non-compliance issues for any water infrastructure system they own, these must be addressed or demonstrate these issues are being addressed and on schedule through other means. These utilities will be required to use Non-Competitive TDEC grant funding to address those issues or demonstrate they are meeting the compliance requirements, otherwise. Utilities must develop and execute or demonstrate they are meeting the items in their corrective action plans (CAP)/engineering report (ER) and are implementing items on schedule. If a utility is not on schedule, actions must be taken to get on schedule, including any construction activities required in the CAP/ER.

The remaining deliverables for each utility covered under the grant contract are dependent on the selected project award types and assemblage of partners, project owners, and responsible parties.

The extent of activities and deliverables are dictated by the project award type. There are four project award types: investigation and planning; investigation, planning, and design; planning, design, and construction; and construction only. Deliverables for Investigation and Planning

project awards are not the same as a Planning, Design, and Construction award. If, for example, a Grantee owned a drinking water plant and distribution system with significant water loss and identified it as one of the two critical needs to be addressed, the Grantee may choose to investigate and plan for the remediation of the water loss by developing a water loss control plan and a preliminary engineering report (Investigation and Planning project award type). Alternatively, applicants may go one step further and propose to investigate, plan, and develop designs to mitigate the water loss, thus creating a water loss control plan, preliminary engineering report, and plans and specifications (Investigation, Planning and Design). A step further would be to plan, design and propose a construction project to rehabilitate distribution lines to eliminate water loss based on the water loss control plan (Planning, Design, and Construction). Therefore, understanding the selected project award type or types in the grant contract is crucial to meeting the deliverable requirements expected. Providing the appropriate deliverables will also support proper and timely reimbursement for costs incurred. Failure to supply the expected deliverables will limit or prevent TDEC from reimbursing entities for invoices received.

Investigation and Planning

Investigation and planning projects can be an initial step to determining how to identify and plan for a capital project or other water infrastructure planning study. Each project identified under Investigation and Planning in the grant application is required to deliver:

- Engineering Agreement within 60 days of grant award
- Preliminary engineering report (or facilities plan) by the end of project
- Critical Needs Plans for any utility where critical needs were identified in Scorecard Summaries and will be addressed through use of State ARP Non-Competitive grant funds
- For utilities with significant non-compliance a CAP/ER must be supplied within 6 months of the grant award or be meeting the compliance schedule through other means

Investigation, Planning and Design

This project award type takes the action a step further and should reasonably lead to a capital project. Each project identified under Investigation, Planning and Design in the grant application is required to deliver:

- Engineering Agreement within 60 days of grant award
- Preliminary engineering report (or facilities plan)

- Critical Needs Plans for any utility where critical needs were identified in Scorecard Summaries and will be addressed through use of State ARP Non-Competitive grant funds
- Plan of Operation(s) for every individual project where a new facility is planned, or expansion or upgrade of existing facility will occur
- Engineering plans and specifications
- For utilities with significant non-compliance, a CAP/ER must be supplied within 6 months of the grant award and submission of any documents (reports, manuals, and construction documents) as required in the Order or CAP/ER and must meet compliance schedule

Planning, Design, and Construction

Planning, Design, and Construction (PDC) project award types are expected to end in the construction of a capital project. Some proposals, based on the restrictions of application process may have projects like asset management plans listed in the PDC project award type. In addition, some projects listed may not get to construction due to budget shortfall or supply chain issues. These projects will only be responsible for producing plans or plans and specifications, depending on the circumstances. However, every proposal with construction projects is required to address critical needs first with construction funds. In general, all construction projects identified under the PDC project award type must provide the following:

- Engineering Agreement within 60 days of grant award
- Preliminary engineering report (or facilities plan)
- Critical Needs Plans for any utility where critical needs were identified in Scorecard Summaries and will be addressed through use of State ARP Non-Competitive grant funds
- Plan of Operation(s) for every individual project where a new drinking water or wastewater facility is planned, or an expansion of the existing facility
- Engineering plans and specifications
- For utilities with significant non-compliance, a CAP/ER must be supplied within 6 months of the grant award and submission of any documents (reports, manuals, and construction documents) as required in the Order or CAP/ER and must meet compliance schedule

For individual projects going to construction:

- Provide TDEC with procurement “Bid Package” for review and approval prior to construction start

- TDEC will issue an Authority to Award letter after approval of procurement documents; some projects may have already proceeded to construction - for these projects, TDEC will withhold reimbursement until the procurement package has been approved
- Provide TDEC with a construction start date and request a site inspection
- Projected Initiation of Operations; inform TDEC and request a site inspection when the constructed asset is put into use
- Operation and maintenance manual for every individual project where a new drinking water or wastewater facility is planned, or there is significant expansion of the existing facility
- Inform TDEC and request a site inspection at construction completion
- Site certification or letter in lieu of for each individual project
- For utilities with significant non-compliance, approval of all required documents, including plans and specifications and a construction budget/schedule that demonstrates all actions outlined in the Order or CAP/ER will be complete to the maximum extent possible within the grant timeline and compliance schedule; or demonstrate these requirements are being met through other means

Construction Only Projects

Construction Only projects are required to submit the following:

- Preliminary engineering report(s) (or facilities plan) (Standard Projects only)
- Approved engineering plans and specifications
- Provide TDEC with procurement "Bid Package" for review and approval prior to construction start
- TDEC will issue an Authority to Award letter after approval of procurement documents; some projects may have already proceeded to construction - for these projects, TDEC will withhold reimbursement until the procurement package has been approved
- Provide TDEC with a construction start date and request a site inspection
- Projected Initiation of Operations; inform TDEC and request a site inspection when the constructed asset is put into use
- Operation and maintenance manual for every individual project where a new drinking water or wastewater facility is planned, or there is significant expansion of the existing facility (if applicable)
- Inform TDEC and request a site inspection at construction completion
- Site certification or letter in lieu of for each individual project (as needed)

- For utilities with significant non-compliance, approval of all required documents, including plans and specifications and a construction budget/schedule that demonstrates all actions outlined in the Order or CAP/ER will be complete to the maximum extent possible within the grant timeline and compliance schedule. Or demonstrate these requirements are being met through other means.

In addition to these deliverables, many utilities are addressing critical needs and are required to supply Critical Needs Plans.

Critical Need Plans: Water Loss Reduction, Inflow and Infiltration Elimination, Aging Infrastructure Replacement, and Reduction in Capacity Demand Plans

Critical Needs Plans are aids for utilities, the public, and TDEC in understanding how a system intends to address issues identified in their TN Infrastructure Scorecard. These critical needs create chronic operation and maintenance issues, can negatively impact the level of service to customers, interrupt service, and may result in or perpetuate significant non-compliance concerns. Reducing or eliminating these critical needs is necessary to maintaining a sustainable and reliable water infrastructure system.

There is no required format for Critical Needs Plans for water loss, inflow and infiltration (I/I), aging infrastructure, and reduced capacity demand. Consider the plans as tools for potential funding, to inform the governing body and customers, and as a stepwise guide to reducing water loss, eliminating I/I, replacing aging infrastructure, or improving conservation and efficiency. Further, while these plans are deliverables for the grant contract to be submitted to TDEC, fundamentally these plans are a utility document.

To start, any utility's plans should, at a minimum, address the following criteria:

- Reason why the utility developing and implementing this plan
    - Discuss elements as a critical need and the intent to reduce or eliminate the critical need
- Define the utility's critical need goals
    - Short-, mid-, and long-term goals
- Identify individuals involved in the development of the plan
- Detail the specific critical need issues
    - Why is water loss, for example, an issue for the utility?
- Use data sources available for quantification of issues
    - Currently available data sources and their reliability
    - Identify any additional data or data sources that must be developed

- Currently available budgets for addressing critical need activities including and beyond ARP funds in addition to future budget planning & concerns
- Any unique information that is relevant to the utility's critical needs efforts

The utility's critical need plans are living documents and should be reviewed annually and revised as conditions change to reflect the current and future state of the utility in terms of critical needs

Asset Management Plans (AMP)

Asset management plans (AMP) are a critical component of effectively managing water, wastewater, and stormwater infrastructure. The AMP management framework has been widely adopted by the water sector to pursue and achieve sustainable infrastructure. Although utility owners and operators build AMPs specific to their system, the foundation of this process is the same. Without a proper AMP, utilities can struggle to maintain compliance with state and federal regulations, secure adequate funding for capital improvements, and address customer needs. A proper AMP strongly supports a utility's technical, managerial, and financial (TMF) capacity to continuously provide safe, reliable drinking water, wastewater, or stormwater services.

TDEC, through a public-private partnership effort, developed the Tennessee Asset Management Plan Guide to assist water utilities, particularly small utilities, in the development of a comprehensive plan. This AMP guide outlines basic asset management plan components and is designed to meet the minimum criteria for Water Infrastructure Investment Plan (WIIP) American Rescue Plan (ARP) grants. Some utilities may have asset management programs and plans that far exceed the guide. Other utilities may have elements of an AMP but lack a comprehensive plan to meet the grant requirements. Even if a utility has a robust AMP, users should refer to TDEC AMP guidance to assess current AMP(s) for areas of potential updates.

Building an asset management plan is not overly complex but does require time and effort. The AMP guide breaks down the specific tasks needed to address the five core components of an AMP. Companion Tennessee Asset Management Templates help users assemble the minimum required data and information to begin building a comprehensive plan. Users should review the entire guide and make a list of information they have already developed which is needed for the template. The templates include areas to document the inventory of the system's assets, the age and estimated useful lives of existing assets, the condition of the assets, the critical nature of the assets, and a description of the timing and expected cost of the replacement of existing assets. Users should contact TDEC at tdec.arp@tn.gov if they would like to customize the templates.

Where possible, the guide highlights the connection between building a comprehensive AMP and addressing critical needs identified as red flags in the Tennessee Infrastructure Scorecard (Scorecard). Users should use the guide to assist them in addressing Scorecard AMP red flags to meet grant criteria, a requirement of the grant contract.

Stormwater asset management is a new and emerging challenge across the state. Municipal Separate Storm Sewer Systems (MS4s) are regulated entities responsible for managing their stormwater system. Developing a stormwater centric asset management plan can improve TMF along with understanding and addressing stormwater and recurring nuisance flooding issues. MS4s that lack a comprehensive stormwater management plan or a digital inventory and map of the entire storm sewer system, have asset management critical needs. When these issues are identified in the Scorecard summary, systems are required to provide them as deliverables as part of the grant contract.

Preliminary Engineering Reports (PERs) or Facilities Plans (FPs)

Most projects identified in an ARP Non-Competitive grant application require engineering work, including a Preliminary Engineering Report (PER) and plans and specifications. PERs focus on an issue, like water loss in a drinking water system, and evaluates a suite of alternatives to address the issue. This analysis and subsequent selection of an alternative are then chosen for project implementation. A PER is required for all projects, except for construction only projects or Asset Management Plans. The alternatives in the PER should include feasible alternatives that were considered to address the need for the project. PERs should follow the Interagency Preliminary Engineering Memorandum template format.

In some cases, project owners and applicants may develop a Facilities Plan. Facilities Plans are associated with State Revolving Fund (SRF) loan projects. If project owners are leveraging SRF loans with ARP grant dollars, a Facilities Plan (FP) is an acceptable alternative to the PER. PERs and FPs should be uploaded both to MyTDEC Forms and in the GMS under the Deliverables activity.

Term of Contract – Period of Performance

Funds for these state ARP grants were provided by U.S. Treasury through the American Rescue Plan Act as state and local fiscal recovery funds. In the U.S. Treasury's State Local Fiscal Recovery Fund (SLFRF) final rule, use of funds for eligible projects were allowed for activities dating back to March 3, 2021. Therefore, TDEC is allowing the period of performance for each grant contract

be effective from March 3, 2021, and end on September 30, 2026. Costs for projects incurred before March 3, 2021, are not eligible, which is explicitly stated in the U.S. Treasury's State Local Fiscal Recovery Fund (SLFRF) Final Rule.

Procurement

As detailed in the Grant Terms and Conditions, the funds made available through TDEC are governed by the requirements of the American Rescue Plan (ARP), which require recipients to comply with the procurement standards set forth in 2 CFR 200 Subpart D (2 CFR § 200.318 through 2 CFR § 200.327 of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards). In some instances, Grantees will follow state procurement standards, if these are stricter than the federal requirements. The Tennessee Central Procurement Procedure Manual is our state guidance, a companion document to Uniform Guidance mentioned above, to use when evaluating and implementing proper procurement procedures.

CONTRACT TERMS

- Period of Performance - **March 3, 2021 – September 30,2026**
- Procurement Standards – **2 CFR 200.318 – 2 CFR 200.327**
- Purchase Threshold to Obtain Quote - **$10,000 - $50,000**
- Davis-Bacon Act Threshold – **Projects greater than $10M or combining funds** with federal dollars where Davis-Bacon is required

***Procurement requirements for CDBG and SRF could have stricter requirements or additional rules and regulations. Subrecipients should review all requirements of all fundings sources.

Figure 2 Contract Terms

It is important to note the procurement rules outlined. These rules **shall be followed and documented for acquiring property or services required under a federal award or grant contract**. Acquisitions covered under this rule includes purchases of goods and material, construction contractors and professional (consultants or engineering) services. Purchases using grant funding between $10,000 - $50,000 (Informal Purchase Authorization section) or acquisitions greater than $50,000 (Formal Procurement Method section) should be submitted through the Procurement activity in GMS and must be approved before reimbursement. The GMS process for requesting procurement reviews and providing supporting documentation is detailed in Appendix C– Process for Requesting Procurement Approval.

Procurement Requirements

As a Grantee of the program and a non-federal entity, projects must adhere to the competitive bidding thresholds set forth in 2 CFR § 200.320 for the relevant procurement methods. This guidance details the requirements of procurement based on two methods: **informal and formal procurement**, which is determined by the aggregate dollar amount of the purchase. In 2 CFR 200.320(b) it is stated that formal procurement methods are required when an "award exceeds the SAT, or a lower threshold established by a non-Federal entity". Per the Tennessee Central Procurement Procedure Manual (which provides guidance and detailed procedures regarding the State's procurement statutes, rules and regulations) informal purchases are allowed up to the acquisition limit of $50,000. Therefore, due to the State's threshold for formal procurement ($50,000) being less than the federal Simplified Acquisition Threshold or SAT ($250,000), the State's threshold is required to be followed and formal procurement methods must be taken when the value of the procurement for property or services exceeds the lower threshold established in the Tennessee Central Procurement Procedure Manual. Sample procurement type advertisements for bids, required supplemental conditions, and additional documents are provided in Appendix B of this guidance.

Small Purchase Authority Thresholds

Purchase of supplies and services below the small purchase authority threshold, currently set at $10,000, is not required to be solicited competitively. This means that no procurement procedures are required to make purchases less than $10,000 and no quotes are required. If an entity's own procurement/purchasing policy states additional procedures must be followed, the entity are required to be in compliance with its own rules. It is important to note that no procurement shall be artificially divided or split to fall within approved amounts.

Informal Purchase Authorization

As indicated in the TN Central Procurement Procedure Manual, informal purchase authorization is approved for purchases less

TYPES OF ACQUISITIONS

Construction, Material and Supplies, Engineering or Professional Services:

- **Small Purchase** – soliciting quotes or proposals from multiple vendors when the total value of a contract or a purchase will cost less than $10,000
- **Informal Purchase** – soliciting quotes or proposal from at least three (3) vendors when the total value of a contract or a purchase will cost less than $50,000
- **Formal Procurement/Solicitation** (purchases >$50,000)
  - **Request for Proposal or Request for Bid** – a written solicitation for written proposal to provide goods or services to the State. RFP/RFB should be use for soliciting contractors and should include cost estimates.
  - **Request for Qualification** – a written solicitation containing a list of qualifications that must be met before a vendor may propose in response to a Request for Proposals. RFQs should be uses for soliciting engineers or consultants and should be qualification based.

Figure 3 Types of Acquisitions

than $50,000. However, competitive methods should be used whenever practical. Purchasers may use Informal Purchase authority by soliciting quotes or proposals from at least three (3) vendors when the total value of a contract or a purchase will cost less than the amounts needed to be approved by the Procurement Commission. When using the Information Purchase Authorization for purchases of property and services, due diligence should be performed. The procurement professional should document the process and include the document in the procurement file. To document the process, the Grantee must complete the Procurement Activity in GMS and upload the vendor quotes for TDEC review.

Formal Procurement Method

Formal procurement methods are required when the value of the procurement for property or services under a federal financial assistance award exceeds the SAT or a lower threshold established by a non-federal entity. In alignment with the TN Central Procurement Procedure Manual, TDEC has approved a formal procurement threshold of $50,000; as such, Grantees will be required (at a minimum) to perform formal procurement methods outlined in 2 CFR § 200.320(b) and follow the documented procedures for acquiring property and services. The formal methods of procurement that are authorized according to 2 CFR 200 for procuring property or services are:

- ***Request for Bids or Sealed Bids*** – the preferred method for procuring construction contractors, this requires publicly soliciting bids at a firm fixed-price contract (lump sum or unit price) and is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.
- ***Request for Proposals*** – is a procurement method used when conditions are not appropriate for the use of sealed bids and the intent is to award a contract with a fixed price or cost-reimbursement structure. Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the entity, with price and other factors considered.
- ***Request for Qualifications*** – is a method of procurement where offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. This is the method where price is not used as a selection factor, and it can only be used in procurement of engineering or professional services.

Formal procurement methods require public advertising unless a Non-Competitive procurement can be used in accordance with § 200.319(c) or 200.320(c). In order to meet full and open competition requirements, publicly advertised solicitations should be published in local

newspapers, trade magazines or other media outlets that are assessable to any potential responder with no undue barriers to offer. At a minimum, the solicitation for goods or services should include:

- A Request for Bids
- Proposals or Qualifications
- Clear description of the scope or item of interest associated with the solicitation
- Specifications for the project
- Plans, where appropriate. In addition,
- All required forms and certifications should be included in the procurement package. Required forms and certifications include (but are not limited to):
    - Any forms that are required in your local jurisdiction
    - BYRD Anti-Lobbying Amendment Certification
    - Debarment Certification

Procuring Engineering (and Architectural) Services

Similar to the requirements for procuring construction services, architectural and engineering professional services must be solicited if the Grantee expects to seek reimbursement of costs exceeding the formal procurement threshold of $50,000. Specifically, the guidance states, "property or services under a federal financial assistance award that exceeds the SAT (or a lower threshold established by a non-federal entity)" must follow formal procurement methods. For professional services, this procurement requirement may be met using a competitive proposal that is **qualification based**, as described in 2 CFR Part § 200.320(b)(2)(iv)[2]. Soliciting for engineering services is the only procurement where price should not be used as a selection factor in evaluations. Also, as stated in 2 CFR Part § 200.319(c), architectural and engineering services solicitation allows an exception for geographic location as a selection criterion.

[2] *2 CFR Part § 200.320(b)(2)(iv): The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.*

ENGINEERING PROCUREMENT REQUIREMENTS

Uniform Guidance 2 CRF 200.319(a)	All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.
Uniform Guidance 2 CRF 200.319(c)	When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
Uniform Guidance 2 CRF 200.320(b)(2)(iv); TN Code 12-4-107	Non-Federal entities may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services.

Figure 4 Engineering Procurement Requirements

Diversity Business Enterprise (DBE)

Any contract awarded by the Grantee or project owner (as defined in the grant manual) for construction, engineering, or professional services that will be funded through a TDEC ARP grant must assure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible (2 CFR Part 200.321). To ensure compliance with the above requirement, the TDEC requires Grantees to follow the State's Governor's Office of Diversity Business Enterprise (Go-DBE) process to post opportunities for a recommended 30 calendar days (14 calendar days, at a minimum). **The process for posting procurement opportunities on the Go-DBE website is in addition to posting procurements in an acceptable publication, as described in the formal procurement section above.** To post an opportunity on the DBE website, grantees should:

- Visit: Governor's Office of Diversity Business Enterprise (Go-DBE)
- Follow the link at the top of the page to the Grant Website Posting Form
- The Go-DBE form will appear and notes requirements for posting
- Fill in all fields and select ARP under the grant type field
- At the bottom of the form attach all relevant solicitation documents, including the full bid package
- Once submitted, grant information will post within 24-48 hours (excluding holidays)

- Review grant postings and ensure opportunity submission is complete - grant postings can be found here
- Repeat this process for each opportunity (if applicable)

Postings have the same requirement as the requirements for publicly advertising for the project. Clear instructions for how potential bidders should respond to the solicitations is important. Bidder responses must be given equal consideration and evaluated appropriately. As stated in 2 CFR 200.320(b)(2)(i), requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical. Go-DBE postings and documentation demonstrating the steps to solicit diverse businesses, including minority-owned and women-owned businesses, needs to be provided with the bid package to be considered complete. A sample bid package can be found in Appendix B.

Required Federal Contract Provisions

The required federal contract provisions are listed in Appendix B, along with sample language. These are often referred to as *supplemental conditions* in bid package specifications. These provisions and the contract language are required to be written into contractor agreements that will be paid in whole or in part with federal funds. Recommended supplemental considerations, or contract provisions intended to further protect you as the Grantee, TDEC as the recipient, and the federal government, are also included. The required contract provisions ensure federal compliance but do not override any required TDEC contract provisions.

KEY POINTS FOR CONTRACTING & PROCUREMENT

- **Eligible Costs** – funds are made available through the State Water Infrastructure Grants (SWIG) program to be used for eligible drinking water, wastewater, and stormwater projects during the period of March 3, 2021 – September 30, 2026
- As a Grantee of the program and a non-federal entity, projects **must adhere to the competitive bidding thresholds set forth in 2 CFR $ 200.320** for the relevant procurement methods
- Solicitation of bids and procurement of services are strongly recommended to be advertised for 30 calendar days, but when appropriate, these requests may be posted for **14 calendar days, at a minimum**
  - Solicitation should be advertised in local newspaper, trade magazines, city/county procurement websites or other media outlets that are accessible to potential qualified bidders with no unnecessary barriers to respond

Figure 5 Key Points for Contracting & Procurement

Bonding

For construction, facility improvement contracts, or subcontracts exceeding the simplified acquisition threshold, TDEC may accept the bonding policy and requirements of the Grantee,

provided TDEC has decided that the State's interest is adequately protected (2 CFR Part § 200.326; Bonding Requirements). The bonding practices of the Grantee should be provided to TDEC in advance for approval.

If TDEC does not agree that the Grantee's bonding practice are not sufficient to protect the public interest, the Grantee will be required to obtain (at a minimum):

- A bid guarantee from each bidder equivalent to five percent of the bid price
- A performance bond on the part of the contractor for 100 percent of the contract price
- A payment bond on the part of the contractor for 100 percent of the contract price

Debarment and Suspension

A contract award (2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM or sam.gov) in accordance with the Office of Management and Budget (OMB) guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." This requirement extends to vendors or contractors associated with projects funded with federal grant monies. Exclusions noted on sam.gov contains the names of parties debarred, suspended, or otherwise excluded by agencies and parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Prospective contractors or service providers should be required to certify on debarment, suspension, and other responsibility matters.

Davis-Bacon Act and Copeland Anti-Kickback Act

The applicability of the Davis-Bacon Act is detailed in Appendix B – Required and Recommended Federal Contract Provisions. For the American Rescue Plan (ARP), Treasury exercised its federal authority in outlining the requirements for water infrastructure projects and notes that Davis-Bacon is applicable for infrastructure and capital projects that are greater than $10 million, through certification from the recipient or State. Specifically, Treasury provides two avenues for compliance with Davis-Bacon in the SLFRF *Compliance and Reporting Guidance found in Appendix C.* The first option is described as stating an intent to comply through *"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")".* In the GMS Procurement Activity an attestation is included for all projects over $10M or for projects that combines funding from a source that requires Davis-Bacon compliance. If a Grantee intends to certify their

contractors are in compliance, TDEC should be informed through formal communication of the intent to certify compliance. The certification of compliance will require Grantees to obtain certified weekly payrolls from the construction contractors on the project. Certified weekly payroll should be in a format similar to Form WH-347 from the US Department of Labor WH-347.

Another option to demonstrate compliance with Treasury requirements is for Grantees that have projects that total greater than $10 million provide information related to project employment and local impact report information, as outlined in the ARP SLFRF guidance This includes the following data points (which can be found in the Davis-Bacon Reporting template provided in Appendix B):

- The number of employees of contractors and sub-contractors working on the project
- The number of employees on the project hired directly
- The number of employees on the project hired through a third party
- The wages and benefits of workers on the project by classification
- Whether those wages are at rates less than those prevailing (as determined by Davis-Bacon Act)

In addition to support TDEC's Treasury reporting requirements, Grantees 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
- Whether the project prioritizes local hires
- Whether the project has a Community Benefit Agreement, with a description of any such agreement

Grantees must maintain sufficient records to substantiate this information upon request. A template to report Davis-Bacon and Certification of Labor Agreements for projects greater than $10 million has been provided in Appendix B. It is also important to note that projects that utilize other funding sources, like Community Development Block Grants or SRF loans, are subject to requirements for those programs. Therefore, if Davis-Bacon is applicable to those other funding sources, then the Act must be followed for the entire project despite the size of the project and amount of SLFRF funding provided.

The Copeland Anti-Kickback Act applies to all contracts for construction or repair work above $2,000 in situations where the Davis-Bacon Act also applies. Sample language is also included for contracting purposes.

Domestic Preferences for Procurements

All Grantees, as appropriate and to the greatest extent practicable, should exercise a preference for domestically sourced goods and materials when using federal award dollars (2 CFR 200.322). Domestic preference should be given for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). This requirement is not as restrictive as the Build American, Buy America and the American Iron and Steel Acts; and those specific acts are not applicable to the ARP SLFRF programs.

In order to comply with the domestic preference requirement of this grant, Grantees must include the domestic preference language (which is detailed in the Required and Recommended SLFRF Contract Provisions document included in Appendix B) in all agreements with contractors and subcontractors.

Title VI Certification

Treasury's Terms and Conditions note several statutes and regulations that prohibit discrimination to participate in this award without limitation. Of those statutes and regulations, Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) is directly applicable to you as a Grantee for participation in this grant. In GMS, TDEC has included a Compliance Application as a separate application that you must complete to provide your organizations Pre-Audit Survey responses, which must be signed off on before the Grantee agreement can be complete. This application will only need to be completed once per year while participating in this program. As such, the application will automatically go back into Draft Status to be resubmitted 9 months after it has been marked complete.

If you do not see this application on your dashboard, please reach out to TDEC.Grants@tn.gov for access to the Title VI Compliance Application. Additional information along with instructions on how to complete this process are located in the Appendix.

Procurement Approval

All projects that include the acquisition of property or services (including construction projects and professional services) that exceed the $50,000 formal procurement threshold will require a public bid solicitation to award a contract. For each of these bid solicitations, a "bid document" package (including all supporting information) will be uploaded into TDEC's grant management system. A procurement review will be complete in 14 business days, but an approval is dependent upon the provided supporting documentation that demonstrates a complete procurement package. TDEC will require the procurements to be reviewed before reimbursement requests can be approved. For new construction projects that have not already been procured, TDEC will issue an Authority to Award letter after the procurement review has been completed and determined appropriate, to approve the grantee to proceed with an award to a selected vendor.

To ensure full and open procurements, Grantees should follow the standards in 2 CFR Part 200 Subpart D, 2 CFR 200.318 through 2 CFR 200.327 of Uniform Guidance. To confirm the guidelines are followed, TDEC will review each procurement to approve the solicitation procedures and respective transactions (dating back to March 3, 2021) for eligibility prior to reimbursements. The procurement review will take place in GMS and will require Grantees to provide supporting documentation to demonstrate that the solicitation of goods and services were done properly and meets the requirements of Uniform Guidance. The table below provides a listing of documentation that will be requested for each project that meets the $50,000 formal procurement threshold.

Procurement Approval Documentation	
Document	**Description**
Existing Procurement Policies	The Procurement policy that was in place for conducting procurement at the time of acquisition. For procurements performed in the past, please provide the policy that would have been in place at the time of solicitation.
Solicitation Package Issued (RFP/RFB/RFQ)	Request for Proposal (RFP)/Request for Bid (RFB)/Request for Qualification (RFQ) and associated documents; when an entity needs to procure goods or services, this is the request that solicits the goods or services. RFQs or RFPs

Procurement Approval Documentation	
Document	**Description**
	are most associated with engineering and professional services. Generally, RFBs are specific to construction-related work.
Addenda/extensions issued	When solicitations are adjusted, or additional information is provided to potential bidders, addendums are often required to be posted/issued. This should be a part of the procurement file.
Copies of correspondence with bidders	Copies of the Grantee's communication with the bidders, i.e., Q&As, any communication regarding pricing and terms, and any best and final offers (BAFO) requested.
Documentation demonstrating the advertisement of the solicitation	For the procurement to be full and open, the solicitation must be made available to an adequate number of bidders. The solicitation should be advertised on the agency's website or in a newspaper and, as described in this guide, on the Go-DBE website. The requirement of posting on the Go-DBE website is intended to ensure that the affirmative steps of 2 CFR 200.321 are followed.
Independent Cost Estimate	Grantees must prepare a cost estimate of the costs of goods or services independent of the bids from the vendors to assess the reasonableness of the proposals received.
Certified Bid Tabulation and Evaluation Criteria	Grantees must have a systematic formal set of criteria to score proposals. The Bid Tabulation should calculate and document how the bidders were evaluated.
Copies of responses to the solicitation	All of the proposals submitted are required to be provided as proof of multiple vendor responses.
Debarment Documentation	Any party receiving ARP funding must be registered on sam.gov and not debarred with no exemptions. A screenshot representing a vendor's debarment status from sam.gov must be included in the procurement package.
Award Notification and Rationale to Award (if not awarded to the lowest bidder)	The notification to award memorandum should be included in the procurement package. If the bidder awarded the contract is not the lowest bidder, a justification stating the rationale for the award should be included. For current solicitations, this will not be available until after a procurement review is performed and an Authority to Award is issued. For solicitations previously performed (contracts awarded prior to participation in this grant), these documents should be included with the procurement package for review.

Procurement Approval Documentation	
Document	**Description**
Contract with pricing information	After the contract has been awarded, the agreement with the selected vendor should be provided in GMS. This documentation represents the contract between the vendor and the Grantee and should include all required federal contract provisions.
Required Bidder/Contractor Certifications	Some specific certifications are required during bidding or from vendors noted by the State or federal government. The certificates include (copies provided in Appendix B): Iran Divestment, Non-Boycott of Israel Certification, Debarment Certification, Equal Employment Opportunity (for Construction Contracts), and the BYRD Anti-Lobbying Amendment Certification.
Documentation to support the execution of performance and payment bonds	For awarded construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Grantee should provide documentation that supports the protection of the federal interest. This requirement is supported through a bid guarantee that includes 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. Bonds should be for 100% of the total contract price.

Figure 6 Procurement Approval Documentation

Reimbursement

Similar to the Procurement Activity, GMS will also be the method in which a grantee will request reimbursement of eligible costs. To understand the steps to initiate a request, please reference Appendix C which includes both a Reimbursement Quick Reference Guide and a GMS Reimbursement Activity Guide. A request for reimbursement (RFR) for costs incurred for grant contract projects shall include only requests for actual, reasonable, and necessary expenditures required in the delivery of service described in the grant contract and identified in the individual project budget. Reimbursement may not include any request for future expenditures. The grant contract term for a reimbursement request means the time during which the grant applicant may incur new obligations to carry out the work authorized in the grant contract.

Grantees are the only individuals eligible to submit a request for reimbursement. Grantees must submit bid documents or procurement packages for approval prior to requesting reimbursement

for project work. All approved projects must also go through a bid package (procurement) review and approval through GMS before any reimbursement requests will be fulfilled. Only approved projects with approved procurements in GMS are eligible to submit requests for reimbursements for costs incurred. Each Grantee is solely responsible for receiving and approving invoices from partners, responsible parties, or other project owners for activities covered in the grant application. Grantees can only request reimbursements once per month. Therefore, Grantees should work with partners, responsible parties and other project owners on invoicing so that all invoices can be combined to a single invoice monthly and submitted to TDEC through GMS.

- Activities must occur in the eligible performance period (on or after March 3, 2021, through September 30, 2026)
- Activities and costs must be part of an approved project and budget in an executed grant contract and must be tracked
- Grantee must follow procurement requirements for any goods or services, either past or present; reimbursement to the Grantee identified in the grant contract will be allowed, only after a procurement procedure for that project has been approved by TDEC

Grant contracts will start on March 3, 2021 and end on September 30, 2026. Grant applicants may elect to complete their final report early if all contract deliverables are complete and reports are submitted and approved.

- Investigation and Planning
    - The **maximum** allowable reimbursement is 80% of the individual project budget until the **PER(s) and asset management plan(s) is received and approved** by TDEC
- Investigation, Planning and Design
    - The **maximum** allowable reimbursement is 80% of the planning fees until the **PER(s) is received and approved** by TDEC
    - The **maximum** allowable reimbursement is 80% of the design fees until **plans and specifications and asset management plan(s) are received and approved** by TDEC
- Planning, Design, and Construction or Construction only
    - The **maximum** allowable reimbursement is 80% of the design fees until **plans and specifications are received and approved** by TDEC
    - The **maximum** allowable reimbursement is 90% of the total project costs until an **asset management plan(s) is received and approved and construction is complete, the site has been inspected by TDEC (or designated agent), the facilities are in proper operation, and the project has been approved** by TDEC.

Retainage

Construction contracts for Projects may provide for the withholding of retainage; provided, however, that the retainage amount may not exceed five percent (5%) of the amount of the contract.

The Local Government shall release and pay all retainages for work completed pursuant to the terms of any contract to the prime contractor within 90 days after completion of the work or within 90 days after substantial completion of the project for work completed, whichever occurs first. As used in this subsection, work completed shall mean the completion of the scope of the work and all terms and conditions covered by the contract under which the retainage is being held. The prime contractor shall pay all retainages due to any subcontractor within 10 days after receipt of the retainages from the owner. Any subcontractor receiving the retainage from the prime contractor shall pay to any sub-subcontractor or material supplier all retainages due the sub-subcontractor or material supplier within 10 days after receipt of the retainages.

Any default in the making of the payments shall be subject to those remedies provided in this Loan Agreement.

In the event that the Local Government or its prime contractor withholds retainage that is for the use and benefit of the prime contractor or its subcontractors pursuant to Tenn. Code Ann. § 66-34-104(a) and (b), neither the prime contractor nor any of its subcontractors shall be required to deposit additional retained funds into an escrow account in accordance with Tenn. Code Ann. § 66-34-104(a) and (b):

(1) It is an offense for a person, firm, or corporation to fail to comply with Tenn. Code Ann. §66-34-104(a).
(2) A violation of this subsection (e) is a Class A misdemeanor, subject to a fine of three thousand dollars ($3,000).
(3) Each day a person, firm or corporation fails to comply with subsection (a) or (b) or Tenn. Code Ann. § 66-34-104(a) is a separate violation of this subsection (e).
(4) Until the violation of this subsection (e) is remediated by compliance, the punishment for each violation shall be consecutive to all other such violations.
(5) In addition to the fine imposed pursuant to subdivisions (e)(2)(A) and (B), the court shall order restitution be made to the owner of the retained funds. In determining the appropriate amount of restitution, the formula stated in Tenn. Code Ann. § 40-35-304 shall be used.

Documentation Requirements

Each invoice submitted to TDEC for review and reimbursement will need the following documentation:

- An invoice broken out by individual projects
- A description of the services provided
- Any required deliverables stated in the grant proposal

- All relevant documents demonstrating costs incurred in compliance with contractual requirements
- Proof of payment
    - The first reimbursement submitted by a Grantee will only have to include an invoice and the details listed above; no proof of payment will be required
    - The second reimbursement request will require a proof of payment for invoice #1 and details for reimbursement requested for invoice #2
    - Each subsequent reimbursement request should follow this process
    - Proof of payment for any prior submissions must be on file and fully substantiate the previous payment before the next reimbursement will be approved
    - For construction contracts, proof of escrow deposits must be submitted with each request. In the instance of the first payment, documented proof of the retainage account must be submitted. Subsequent payments the Local Government must provide proof that retainage was deposited into the established retainage bank account. Upon the final payment requested from the Local Government, the Local Government will provide proof the all retainage is released to its contractors.
- Change orders
    - Grantees should upload any new amendments and/or Change Orders to contracts for costs included in reimbursement requests

Budget Line Items and Expense Entry

The budget line-item detail is provided in the grant contract for each Expense Category (for example, professional fees and capital expenditures) and further by Project ID and cost type (see Figure 6 below for examples):

Professional Fee, Grant, and Award	Capital Purchase
AMP as a critical Needs Project	Land Purchase for Easement
General Grant Admin	Construction
Acquisition Services for Land/Easement	Equipment Purchase
Review & Legal Fees	Construction Admin/Inspection
Engineering Design/Other Engineering	
Survey	
Bidding Services	
Permits/Easement	

Figure 7 Budget Line Items

When requesting reimbursement, the Grantee will be required to enter each expense included

in the request at the level of detail that includes the procurement, Project ID and Expense Object Line-Item Category. The Grantee may modify budget expenses from an Expense Object Line-Item Category by up to twenty percent (20%) of the line-item amount, but in turn, another budget line item must be reduced by the same amount. As such, it is important to monitor the budget versus actual expenses throughout the life of the grant. In order to modify Budget Line-Item costs between categories, Grantees must notify and obtain approval from SWIG. There will be no increases in the overall Grant Budget.

Both the *Reimbursement Request Summary Table* and the *Reimbursement Request Project Summary* available in the GMS Reimbursement Activity to help track these amounts.

GRANT BUDGET

Additional Identification Information As Necessary

The Grant Budget line-item amounts below shall be applicable only to expenses incurred during the following applicable period:

BEGIN: March 3, 2021 **END: September 30, 2026**

POLICY 03 Object Line-item Reference	EXPENSE OBJECT LINE-ITEM CATEGORY [1]	GRANT CONTRACT	GRANTEE MATCH	TOTAL PROJECT
1. 2	Salaries, Benefits & Taxes	0.00	0.00	0.00
4, 15	Professional Fee, Grant & Award [2]	0.00	0.00	0.00
5, 6, 7, 8, 9, 10	Supplies, Telephone, Postage & Shipping, Occupancy, Equipment Rental & Maintenance, Printing & Publications	0.00	0.00	0.00
11. 12	Travel, Conferences & Meetings	0.00	0.00	0.00
13	Interest [2]	0.00	0.00	0.00
14	Insurance	0.00	0.00	0.00
16	Specific Assistance To Individuals	0.00	0.00	0.00
17	Depreciation [2]	0.00	0.00	0.00
18	Other Non-Personnel [2]	0.00	0.00	0.00
20	Capital Purchase [2]	0.00	0.00	0.00
22	Indirect Cost	0.00	0.00	0.00
24	In-Kind Expense	0.00	0.00	0.00
n/a	Grantee Match Requirement (for any amount of the required Grantee Match that is not specifically delineated by budget line-items above)			
25	**GRAND TOTAL**	0.00	0.00	0.00

Figure 8 Sample Grant Contract

Ineligible Costs

Funds **may not** be used for:

- Debt service payments or replenishing financial reserves (including contributions to rainy day funds)
- Offsetting a reduction in net tax revenue
- Deposits in pension funds
- A project that conflicts with or contravenes the purpose of the American Rescue Plan Act statute
- Bridge financing or loans
- Other costs deemed unallowable in the grant contract

TDEC intends to process RFRs within 30 calendar days from submission of a complete RFR in GMS. Grantees should receive RFR approval notification within that time. It is important to supply all relevant documents supporting the reimbursement request. If information or documentation is missing or clarification is needed, TDEC will issue a Request for Information (RFI) to the Grantee. The RFI will be transmitted through GMS, and the Grantee point(s) of contact will receive a notification.

The Grantee will have 14 calendar days to respond to an RFI. Responses should be submitted in GMS, and upon re-submission, TDEC will resume the review of the RFR. If no response is received within this time frame, TDEC will proceed with processing the RFR minus the costs associated with the RFI. If the Grantee does not have additional documentation or information to satisfy the RFI, a response to the RFI indicating as such will expedite the processing time. RFIs can delay the reimbursement process if not addressed in a timely manner. Grantees can check the status of an RFR in GMS. Please refer to Appendix B on Reimbursements through GMS for further details.

Determinations and Reconsiderations

If all or a portion of requested costs are deemed unallowable, a determination memo (DM) will be issued detailing the amount and reason for the expenses denied. Determination memos will be sent through GMS and emailed directly to Grantee and additional point(s) of contact will receive a notification.

The Grantee will have 30 calendar days from the date of receipt to file a reconsideration for the costs denied. Reconsiderations should include narrative justification in response to the DM and any new or additional documentation not previously submitted. If no reconsideration is received,

TDEC will proceed with closing the RFR. RFRs with only portions of denied costs will be processed for the portion of costs approved. Denied costs may be submitted as part of a new RFR at a later date only if additional documentation or justification becomes available.

If the Grantee does not have additional documentation or information to respond to the DM, a response to the DM indicating as such will expedite the processing time for completion of the RFR.

Co-Funding

Co-funding requirements are applied to every Non-Competitive grant proposal. The minimum co-funding percentage will be defined in the grant contract. Please note that the RFR will be required to demonstrate that the Grantee has addressed the match. Please review the ARP Non-Competitive Grant Manual, pages 10-11, for details about co-funding requirements.

Grant Compliance and Grantee Monitoring

To successfully manage a federal grant program, the Grantee must adhere to several compliance and monitoring requirements.

Risk Assessments

The risk assessment is an important tool used to identify and evaluate Grantee potential areas of concern and specific areas that may be high risk. Risk assessments are a key provision in the Uniform Guidance under the 2 CFR § 200.332(b) requirement for pass-through entities, which informs TDEC of a Grantee's existing controls, capacity, experience, or external variables that may impact the risk of non-compliance with a grant program. Under this provision, TDEC must evaluate each Grantee's risk for noncompliance with federal statutes, regulations, and the terms and conditions of the grant contract. This allows TDEC to determine the appropriate level of Grantee monitoring as described in 2 CFR § 200.332(d) and (e). The Uniform Guidance allows agencies to develop an agency-based risk assessment framework. The risk assessment process includes a federal debarment check, financial and resource stability to execute the grant, quality of management systems and standards, grant performance history, audit reports and findings, live interview, and ability to adhere to the requirements of the grant terms and conditions. Once completed, the Grantee is assigned a risk rating and a subsequent monitoring plan best to support the Grantee in successfully managing funds. In certain cases, a Grantee may be denied eligibility to the program if they are debarred or have previously mismanaged federal funds.

Once Grantees have an approved application or it has been determined that the applicant will soon be approved, the next step in the grant management process will to be to complete a risk assessment for the Grantee. All approved Grantees will be evaluated using the risk assessment framework. This information will be added to each grant contract's files to support compliance with 2 CFR § 200.332 and implementation of TDEC's monitoring processes. Grantees can prepare for risk assessments several ways, including maintaining current audit paperwork and findings resolutions, updating documented policies and procedures, and reviewing any interview questions in advance (if applicable).

Compliance Monitoring

Compliance monitoring is an ongoing process that involves continuous communication and evaluation. It is critical for Grantees to comply with applicable state, federal, and programmatic requirements throughout the duration of the Grantee agreement. Monitoring is an important requirement under 2 CFR 200.329 to ensure a Grantee is carrying out activities in a timely manner, within budget, and in accordance with the Grantee agreement. This compliance step also assesses if the Grantee has the resources and financial capacity to successfully execute the approved project while minimizing opportunities for waste, mismanagement, fraud, and abuse. Compliance monitoring will identify and resolve potential compliance problems through discussion, negotiation, and technical assistance and training, while also providing adequate follow-up measures to ensure Grantees correct performance and compliance deficiencies.

DESK REVIEWS

Desk reviews assess and document compliance with the requirements based on:

- **File reviews** to determine the accuracy of the information submitted to TDEC by the subrecipient
- **Reviewing financial and performance reports** for accuracy and compliance and
- **Communication** with the subrecipient to clarify and determine the accuracy of the information and document results

Figure 9 Desk Reviews

The frequency of monitoring depends on the risk rating obtained from the Grantee risk assessment. Monitoring, and specifically the review of risks, are considered throughout the grant management life cycle. Grantees can prepare for monitoring by keeping up to date, organized, and easily accessible records if requested and have personnel dedicated to communicating with monitors.

Monitoring includes ongoing communication with Grantees, progress meetings, and site visits or inspections, and a desktop review. In general, desktop reviews consist of reviewing documents submitted to TDEC by the Grantee during a pre-defined period to determine compliance with the applicable federal and grant requirements and whether performance expectations are being achieved. Documents reviewed may include, but are not limited to, periodic progress reports, annual and final reports, and audit reports to assess performance and look for indicators of performance or compliance problems.

State and Federal Compliance

The Grantee shall comply with all applicable state and federal laws and regulations in the performance of the grant contract. Awards made with federal funds require contracts for developing and constructing goods and services to follow the federal standards outlined in the Uniform Administrative Requirements. The Grantee must comply with the more stringent requirements in cases where the state and federal laws may differ.

Site Inspections

TDEC will conduct site inspections for ongoing projects covered in proposals, as part of routine monitoring protocol. Site inspections include visiting the office of the Grantee or project site location for each individual active project under construction. This will allow TDEC to perform a more in-depth review of projects to confirm compliance. Site inspections ensure performance goals are being achieved and construction projects comply with state and federal statutes, regulations, and the terms and conditions of the grant contract. Site inspections occur once the work begins and are conducted through grant closeout. The frequency of inspections will be determined by the assessed Grantee risk rating and applicable risk detection controls. Grantees determined "higher risk" will be monitored more frequently with additional site inspections, while "lower risk" Grantees might have fewer site

SITE INSPECTIONS

Site inspections may include, but are not limited to:

- Performing on-site reviews of the subrecipient's grant program operations
- Reviewing the project plan and progress reports and comparing them against the observed progress based on the site inspection
- Following-up and ensuring that the subrecipient takes timeline and appropriately action on all deficiencies pertaining to the ARP award provided to the subrecipient, detected through audits, on-site reviews, and written confirmation from the subrecipient
- Providing subrecipients with training and technical assistance on program-related matters

Figure 10 Site Inspections

inspections. Grantees can prepare for site inspections by keeping their progress reports and project plans current and organized, ensuring the project site is accessible, and having personnel dedicated to communicating with site inspectors.

Reporting

Reporting is essential to the grant management cycle and should be conducted throughout the process. TDEC must comply with all reporting requirements and responsibilities as a recipient of SLFRF funds. As described in the Final Rule, "… reporting requirements promote transparency and accountability for the general public and constituents of recipient governments to understand how state, local, and Tribal governments have used SLFRF funds". Treasury may address potential violations of the Final Rule based on both information submitted from recipients, either through required quarterly reports or self-reporting, and from other sources of information. As a result, Grantees will be required to provide timely data points necessary to report to Treasury.

REPORTING

At a minimum, reports should include:

- Subrecipient name
- Grant contractor's Edison ID
- Total grant funding amount spent-to-date
- A narrative section that describes
  - Program goals & outcomes
  - Success & setbacks
  - Defined Key Performance Indicators (KPIs) to determine progress
  - Activities not completed
- Other relevant details requested

Figure 11 Reporting

Since TDEC's Non-Competitive grant will be funded with federal dollars where the State of Tennessee is the recipient, Grantees receiving funds will be subject to applicable Tennessee law, including internal audit, State audit, federal single audit, and OIG audit, among others. Grantees that expend $750,000 or more during the entity's fiscal year in federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR 200.501.

Data Collected, Timelines, and Templates

The Grantee is required to submit brief, periodic progress reports to TDEC as requested on a predetermined ongoing basis. The Grantee must submit an annual report within three (3) months of the end of each year (federal fiscal year) of the grant term. The final report will take the place of the annual report for the final year of the grant term. The Grantee is required to submit annual and final reports to TDEC. When a federal single audit is required (when $750,000 or more of

federal funds has been spent in 1 year), the audit shall be performed in accordance with the U.S. Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

All Quarterly Progress Reports, Annual Reports, or requested Final Reports should include the following:

- Grantee name
- Grant contract's Edison identification number
- Total grant funding amount spent-to-date
- Partners, project owners, or other responsible parties
- A narrative section, ***by individual project***, that describes:
    - Individual project goals and outcomes, including whether project addressed identified critical needs
    - Successes and setbacks
    - Defined Key Performance Indicators (KPIs) to determine progress
    - Construction start dates
    - Mid-point dates
    - Initiation of Operation dates
    - Close-out dates if other than Initiation of Operations
    - Activities not completed
    - Any individual projects not started to date
    - Other relevant details requested by TDEC

Disbursement Reconciliation & Closeout

Grantees must submit any final cost documentation within 30 days of the grant contract end date (see Contract Term – Period of Performance) in GMS in order to generate a grant disbursement reconciliation report. Any costs requested for reimbursement after submitting the final invoice will not be reimbursed.

Final Grant Reconciliation

- The grant disbursement reconciliation report must clearly show evidence of the Grantee expenditures incurred that meet the match requirement as identified in the grant contract

- Grantee expenses that are reported to meet the match requirement may only be reported once and may not be duplicated across this or multiple grants
- If the Grantee fails to meet any part of the match requirement, the "grant contract" amount will be reduced by the amount of match that was not contributed to the Total Project amount
- If disbursements from the TDEC exceed the amount of the final grant contract after reconciliation, the Grantee will be required to repay the amount over the final grant contract back to TDEC
- Failure to submit documentation for the final grant disbursement reconciliation report, as detailed in the grant contract, may result in TDEC de-obligating from the project, and the Grantee will be required to repay the full amount paid by TDEC for the respective project

Document Retention

Federal regulations require that financial records, supporting documents, statistical records, and all other non-federal entity records pertinent to a federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the federal awarding agency or TDEC in the case of a Grantee (2 CFR 200.334 – 200.338).

Fraud, Waste and Abuse Reporting

Grantees are the first line of defense and are responsible for ensuring the SLFRF award funds are not used for ineligible purposes and that there is no fraud, waste, abuse, or mismanagement associated with their SLFRF award. Transparency and public accountability for SLFRF awarded funds and the use of such funds are critical to upholding program integrity and trust in all levels of government, and funds should be managed based on the provided Treasury and TDEC guidance. All instances of fraud, waste, abuse or mismanagement associated with these funds should be communicated through the proper channels and escalated to TDEC when appropriate. In addition, with federal government emphasis on sound financial management of resources, Grantees may also be required to report to oversight organizations such as the Pandemic Response Accountability Committee (PRAC) and/or Treasury's Office of Inspector Generals.

Other Terms & Conditions

While this document is focused on providing guidelines for Grantees to implement and follow, it does not explicitly address all terms and conditions of the grant. Moreover, this document is supplemental to the grant contract, which details additional rules that must be followed to maintain compliance with the agreement entered into with TDEC. Users should reference grant contracts for details surrounding these sections: Federal Preaward Authority, Maximum Liability, Compensation Firm, Travel Compensation, Indirect Cost, Cost Allocation, States Right to Set Off, Prerequisite Documentation, Termination for Convenience, Termination for Cause, Conflicts of Interest, Lobbying, Communication and Contacts, Subject to Funds Availability, Nondiscrimination, HIPAA Compliance, Public Accountability, Public Notice, Licensure, Strict Performance, Independent Contractor, Limitation of State's Liability, Force Majeure, Tennessee Department of Revenue Registration, Reserved, State Interest in Equipment or Motor Vehicles, Completeness, Severability, Headings, Iran Divestment Act, Confidentiality of Records, Conflicting Terms and Conditions, Grantee Participation, Federal Funding Accountability and Transparency Act (FFATA), Transfer of Grantee's Obligations, Equal Opportunity, Contract Work Hours and Safety Standard Act, Clean Air Act and Federal Water Pollution Control Act, and Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.

Appendix A – Grant Contracts and Deliverables

Grant Contract

This pro forma grant contract outlines the terms and conditions for all Non-Competitive grant awards. Individual grant contracts will specify the approved infrastructure type, project award type, maximum liability, recipient contact information, and the Grant Budget. All other terms and conditions will remain unchanged.

Water Loss Control Plan Template

General Outline of a Preliminary Engineering Report (PER)

Engineering Plan Submittals

TDEC hosted an Engineering Document Submittals Virtual Workshop and explained best practices for submitting engineering documents, such as engineering reports, and construction documents, to TDEC for review and approval.

- **Engineering Documents Submittal Workshop Presentation**
- **Engineering Documents Submittal Workshop Recording**

Site Certification

In Lieu of Site Certification Sample Letter

Appendix B – Procurements, Bid Packages, and Contract Requirements

Sample Bid Packages

- **Procurement Example Competitive Bids Procurement of Design Services by RFQ**
  - This example document is provided for State Water Infrastructure Grants (SWIG) program Grantees looking for an example of a competitive procurement utilizing a Request for Qualifications (RFQ).
- **Procurement Example Competitive Bids Procurement of Professional Services by RFP**
  - This example document is provided for State Water Infrastructure Grants (SWIG) program Grantees seeking an example of a competitive procurement utilizing a Request for Proposals (RFP).
- **Procurement Example Sealed Bid Solicitation**
  - This example document is provided for State Water Infrastructure Grants (SWIG) program grantees seeking an example of local government procurement utilizing a sealed bid solicitation for construction.

Bidder/Vendor Certifications

The following documents outline required supplementary requirements to be provided by the bidders and vendors of the project. These certifications should be completed by vendors during the procurement process and provided with the supporting documentation to support the procedures performed during the solicitation process.

- **BYRD Anti-Lobbying Amendment Certification**
- **Iran Divestment Act Certification**
- **Debarment Certification**
- **Non-Boycott of Israel Certification**
- **MWBE Certification**

Required and Recommended Federal Contract Provisions

The following document outline the required and recommended supplemental conditions that must be included in contracts that are being funded in part or whole with grant funding from the SLFRF.

- **Required and Recommended SLFRF Supplemental Conditions for Contracts**
- **Davis-Bacon and Certification of Labor Agreements Reporting Template** (for projects greater than $10 million)

Required Construction Site Signage

- **Identification Signage for Individual Projects Going to Construction**
  - **State Water Infrastructure Grants Project Sign Sample**
- **Wage Rates** – every employer performing work covered by the labor standards of the Davis-Bacon and Related Acts shall post a notice (including an applicable wage determination) at the site of the work in a prominent and accessible place where it may be easily seen by employees
- **Permits** - a copy of all applicable permits must be posted on-site for the duration of the permit(s) and be installed in accordance with all permit requirements

Appendix C – Resources (DRAFT)

ARP Non-Competitive Grant Manual

This grant manual details how TDEC is administering $1 billion through Non-Competitive, formula-based grants. This grant manual describes the Non-Competitive SWIG grant funding outlined in the WIIP.

Asset Management Plan

This guide highlights the connection between building a comprehensive asset management plan (AMP) and addressing critical needs identified as red flags in the Tennessee Infrastructure Scorecard (Scorecard). Users should use this guide to assist addressing Scorecard AMP red flags to meet grant criteria as described in the Non-Competitive Grant Manual.

GMS User Guide

The GMS User Guide includes the following processes and will outline the steps to complete procurement and reimbursement activities in GMS. Additional resources will be included that will assist Grantees with completing these processes.

- **GMS Process for Requesting Procurement Approval (pages 5-36)**
- **GMS Process for Requesting Reimbursement (pages 39-53)**

Quick Reference Guides

The quick reference guides outline any requirements, prerequisites, documents needed, and resources for reimbursements, deliverables, and preliminary engineering reports.

- **Reimbursement Quick Reference Guide**
- **Deliverables Quick Reference Guide**
- **Preliminary Engineering Report (PER) Quick Reference Guide**

U.S. Treasury Guidance

The U.S. Treasury has provided guidelines for receiving ARP SLFRF grants in several documents. The below documents outline the guidance provided by the U.S. Treasury.

- **SLFRF Final Rule**
- **SLFRF Final Rule FAQ**
- **SLFRF Compliance and Reporting Guidance**

Uniform Guidance (2 CFR Part 200)

Recipients (and therefore grantees or subrecipients) must comply with the applicable requirements of the Uniform Guidance regarding procurement, contracting, and conflicts of interest and must follow the applicable laws and regulations in their jurisdictions