

# Federal Requirements for Federally Funded Construction Activities

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## Applicability

Uniform Guidance requirements require prior written approval for capital expenditures, which would include construction projects. Education Department General Administrative Requirements (EDGAR) precludes the use of federal funds for use on construction unless the grant has specifically allowed this use.

ESSER funds may be used for construction that meets the overall purpose of the CARES Act, CRRSA Act, or ARP Act programs, which is “to prevent, prepare for, and respond to” COVID-19.

If you are a recipient of federal funds that are administered by NC DPI, please ensure that your organization has obtained the appropriate approval from the applicable Program Division at DPI before spending federal funds on construction expenditures.

If your organization has received approval for using federal funds on construction activities, information in this document outlines the Uniform Guidance and EDGAR laws and responsibilities applicable to your organization and those laws that you must ensure your organization’s contractors must meet to ensure compliance and allowability of the associated expenditures.

## Scope

Uniform Guidance requirements apply to projects that are considered construction or maintenance. EDGAR requirements are only applicable to construction. Projects should be identified as construction or maintenance and repair to determine applicable regulations.

Construction means:

- (1) Preparing drawings and specifications for school facilities;
- (2) Repairing, renovating, or altering school facilities;
- (3) Extending school facilities as described in § 222.172(b);
- (4) Erecting or building school facilities, as described in § 222.172(c); and
- (5) Inspections or supervision related to school facilities projects. 34 CFR § 222.176(a)

Maintenance and Repair means:

Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition. § 200.452

## **Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200)**

### **Allowability**

#### **Pre-approval requirements**

Capital expenditures for general purpose equipment (with a unit cost of \$5,000 or more), buildings and land, including material improvements to buildings and land, are allowable as direct costs only with prior written approval of the federal awarding agency or pass-through entity.

Check with the specific grant program administrator to determine if this type of expenditure is allowable for your grant funds and how prior approval can be obtained.

Documentation of this approval should be maintained as support showing prior approval and allowability of the purchase as a direct cost of the program. § 200.439

### **Procurement**

#### **General procurement requirements**

Uniform Guidance procurement requirements found in subpart D of 2 CFR

§ 200.318-§ 200.326 are applicable including:

- Documented procurement procedures that conform with 200.317 through 200.327
- Written standards of conduct covering conflicts of interest
- Avoid acquisition of unnecessary or duplicative items
- Meet competition requirements set forth in 200.319
- Procurement must be conducted in a manner that ensure compliance with

the methods of procurement applicable based on cost for the acquisition of services or property identified in § 200.320 (Note: The sealed bids method is the preferred method for procuring construction. § 200.320)

- Costs must meet the general criteria, including reasonable, necessary, and allocable, set forth in § 200.403, § 200.404, and § 200.405.

#### **Debarment and suspension**

A contract award must not be made to parties listed as debarred or suspended in the System for Award Management (SAM). §180.220 and §180.300

#### **Contractor oversight**

Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Provide the specific procedures the non-federal entity uses to monitor contractor performance. § 200.318(b)

#### **Identifying responsible contractors**

Award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. § 200.318(h)

#### **Maintain records**

The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. § 200.318(i)

#### **Bid documentation**

Units of government must provide documentation of accepted or rejected bids and proposals and support internal controls through written policies and procedures. § 200.318(i)

Examples of required documentation include:

- Procurement method
- Contract type selection
- Contractor selection or rejection
- Basis for contract type

### **Byrd anti-lobbying certification**

Contractors that apply or bid for an award exceeding \$100,000 must file the required certification for compliance with the Byrd Anti-Lobbying Amendment. 31 U.S.C. 1352

### **General procurement requirements with relevance to construction**

#### **Value engineering clause**

The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost. § 200.318 (g)

#### **Time and materials contracts**

Contract whose cost to a non-Federal entity is the sum of the actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. Use of time and material type contracts are permitted only after a determination that no other contract is suitable and that the contract includes a ceiling price that the contractor exceeds at its own risk.

Since this formula generates an open-ended contract price, a time-and-materials

contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls. § 200.318(j)

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

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs

(b)(1) through (5) of this section.  
§ 200.321

### **Domestic preferences for procurements**

As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. § 200.323

### **Contract cost and price**

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

(b) The non-Federal entity 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. To establish a fair and reasonable profit, 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 record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) 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 this

part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used. § 200.324

(e) Architecture and Engineering Services and Federal Funds

Uniform Guidance allows for the selection of architecture and engineering services where price is not a selection factor. § 200.320 (iv) .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 through A/E firms that are a potential source to perform the proposed effort. § 200.320

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.

### **Maintenance and Repair**

Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable, not as a construction activity and if provided for elsewhere. § 200.452

### **Bonding requirements**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “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.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s requirements under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. § 200.325

### **Use of recovered materials**

Non-Federal entity is subject to the Solid Waste Disposal act regarding the procurement of recovered materials. The requirements include only procuring items that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of

the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. § 200.323

### **Contingency provisions**

(a) Contingency is that part of a budget estimate of future costs (typically of large construction projects, IT systems, or other items as approved by the Federal awarding agency) which is associated with possible events or conditions arising from causes the precise outcome of which is indeterminable at the time of estimate, and that experience shows will likely result, in aggregate, in additional costs for the approved activity or project. Amounts for major project scope changes, unforeseen risks, or extraordinary events may not be included.

(b) It is permissible for contingency amounts other than those excluded in paragraph (a) of this section to be explicitly included in budget estimates, to the extent they are necessary to improve the precision of those estimates. Amounts must be estimated using broadly-accepted cost estimating methodologies, specified in the budget documentation of the Federal award, and accepted by the Federal awarding agency. As such, contingency amounts are to be included in the Federal award. In order for actual costs incurred to be allowable, they must comply with the cost principles and other requirements in this part (see also §§200.300 and 200.403 of this part); be necessary and reasonable for proper and efficient accomplishment of project or program objectives, and be verifiable from the non-Federal entity’s records.

(c) Payments made by the Federal awarding agency to the non-Federal entity’s “contingency reserve” or any similar payment made for events the occurrence of which cannot be foretold with certainty as to the time or intensity, or with an assurance of



their happening, are unallowable, except as noted in §§200.431 and 200.447.

#### §200.433

##### **Depreciation**

(a) Depreciation is the method for allocating the cost of fixed assets to periods benefitting from asset use. The non-Federal entity may be compensated for the use of its buildings, capital improvements, equipment, and software projects capitalized in accordance with GAAP, provided that they are used, needed in the non-Federal entity's activities, and properly allocated to Federal awards. Such compensation must be made by computing depreciation.

(b) The allocation for depreciation must be made in accordance with Appendices III through IX.

(c) Depreciation is computed applying the following rules. The computation of depreciation must be based on the acquisition cost of the assets involved. For an asset donated to the non-Federal entity by a third party, its fair market value at the time of the donation must be considered as the acquisition cost. Such assets may be depreciated or claimed as matching but not both.

For the computation of depreciation and additional requirements see § 200.436

##### **Interest**

(a) *General.* Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the non-Federal entity's own funds, however represented, are unallowable. Financing costs (including interest) to acquire, construct, or replace capital assets are allowable, subject to the conditions in this section.

(b) *Capital assets.* (1) Capital assets is defined as noted in §200.1 of this part. An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP.

See § 200.449 for more information on calculating and charging interest.

##### **Contract Provisions**

The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part. § 200.327

See requirements in Appendix I: Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

## **Education Department General Administrative Requirements and Use of a grant for construction (34 CFR 75.600-75.615)**

No grantee may use its grant for acquisition of real property or for construction unless specifically permitted by the authorizing statute or implementing regulations for the program. § 75.533

If construction is permitted, sections § 75.601-75.615 apply to a grantee whose grant includes funds for construction.

Requirements include:

### **Assessment of environmental impact**

An applicant shall include with its application its assessment of the impact of the proposed construction on the quality of the environment. § 75.601

### **Special environmental impact guidelines for projects funded with ESSER funds**

Construction projects funded with ESSER funds are exempted from § 75.601 (See page 19 [DOE Q&A dated 09 02 21](#))

### **Preservation of historic sites**

The application must describe preservation of historic sites.

(a) An applicant shall describe in its application the relationship of the proposed construction to and probable effect on any district, site, building, structure, or object that is:

(1) Included in the National Register of Historic Places; or

(2) Eligible under criteria established by the Secretary of Interior for inclusion in the National Register of Historic Places. § 75.602

### **Grantee's title to site**

A grantee must have or obtain a full title or other interest in the site, including right of

access, that is sufficient to ensure the grantee's undisturbed use and possession of the facilities for 50 years or the useful life of the facilities, whichever is longer.

§ 75.603

### **Availability of cost-sharing funds**

A grantee shall ensure that sufficient funds are available to meet any non-Federal share of the cost of constructing the facility.

§ 75.604

### **Beginning the construction**

(a) A grantee shall begin work on construction within a reasonable time after the grant for the construction is made.

(b) Before construction is advertised or placed on the market for bidding, the grantee shall get approval. § 75.605

### **Completing the construction**

(a) A grantee shall complete its construction within a reasonable time.

(b) The grantee shall complete the construction in accordance with the application and approved drawings and specifications. § 75.606

### **General considerations**

In designing facilities and carrying out construction:

(a) A grantee shall insure that the construction is:

(1) Functional;

(2) Economical; and

(3) Not elaborate in design or extravagant in the use of materials, compared with facilities of a similar type constructed in the State or other applicable geographic area.

(b) The grantee shall, in developing plans for the facilities, consider excellence of architecture and design and inclusion of works of art. The grantee may not spend

more than one percent of the cost of the project on inclusion of works of art. § 75.607

### **Areas in the facilities for cultural activities**

A grantee may make reasonable provision, consistent with the other uses to be made of the facilities, for areas in the facilities that are adaptable for artistic and other cultural activities. § 75.608

### **Comply with safety and health standards**

In planning for and designing facilities, a grantee shall observe:

(a) The standards under the Occupational Safety and Health Act of 1970 (Pub. L. 91-576) (See 36 CFR part 1910); and

(b) State and local codes, to the extent that they are more stringent. § 75.609

Links to DPI review requirements can be found in Appendix III.

### **Access by the handicapped**

A grantee shall comply with the Federal regulations on access by the handicapped that apply to construction and alteration of facilities.

These regulations are:

(a) For residential facilities - 24 CFR part 40; and

(b) For non-residential facilities - 41 CFR subpart 101-19.6. § 75.610

### **Avoidance of flood hazards**

In planning the construction, a grantee shall, in accordance with the provisions of Executive Order 11988 of February 10, 1978 (43 FR 6030) and rules and regulations that may be issued by the Secretary to carry out those provisions:

(a) Evaluate flood hazards in connection with the construction; and

(b) As far as practicable, avoid uneconomic, hazardous, or unnecessary use of flood plains in connection with the construction. § 75.611

### **Supervision and inspection by the grantee**

A grantee shall maintain competent architectural engineering supervision and inspection at the construction site to insure that the work conforms to the approved drawings and specifications. § 75.612

### **Relocation assistance by the grantee**

A grantee is subject to the regulations on relocation assistance and real property acquisition in 34 CFR part 15. § 75.613

### **Grantee must have operational funds**

A grantee shall insure that, when construction is completed, sufficient funds will be available for effective operation and maintenance of the facilities. § 75.614

### **Operation and maintenance by the grantee**

A grantee shall operate and maintain the facilities in accordance with applicable Federal, State, and local requirements. § 75.615

### **Energy conservation**

(a) To the extent feasible, a grantee shall design and construct facilities to maximize the efficient use of energy.

(b) The following standards of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) are incorporated by reference in this section:

(1) ASHRAE-90 A-1980 (Sections 1-9).

(2) ASHRAE-90 B-1975 (Sections 10-11).

(3) ASHRAE-90 C-1977 (Section 12).

Incorporation by reference of these provisions has been approved by the Director of the Office of the Federal Register pursuant to the Director's authority under 5 U.S.C. 552 (a) and 1 CFR part 51....

(c) A grantee shall comply with ASHRAE standards listed in paragraph (b) of this section in designing and constructing facilities built with project funds. § 75.616

## **Appendix I: Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

In addition to other provisions required by the Federal agency or non-Federal entity, per Appendix II to Part 200, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable:

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, 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.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40

hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—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 (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the 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.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) Procurement of recovered materials- A non-Federal entity that is a state agency or agency 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. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(K) Prohibition on certain telecommunications and video surveillance services or equipment - (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115-232, section 889 for additional information.

(d) See also §200.471.

(L) Domestic preference for procurements 2 CFR 200.322 - (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

## Appendix II: References to Regulations

[Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards \(2 CFR 200\)](#)

[Education Department General Administrative Regulations \(EDGAR\) \(34 CFR 75.600-75.615\)](#)



## Appendix III: DPI Capital Project Submittal and Review Requirements After Allowability Approval

- A registered Architect and/or registered Engineer shall prepare the drawings and specifications in accordance with [G.S. 133-1 through 133-4.1](#) and other applicable state requirements. Certain school projects may require NC DOI Code Review per [G.S. 58-31-40](#).
- School Planning review is required per [G.S. 115C-521\(c\)](#). Submit design documents at appropriate phases of the design (SD/DD/CD). Construction expenditures may not proceed prior to completion of the review process.
- DPI Capital Project Submittal Form:

<https://www.dpi.nc.gov/media/581/download>

- DPI Capital Project Submittal Procedures:

<https://www.dpi.nc.gov/districts-schools/district-operations/school-planning/design-review>

- DPI Facility Design Guidelines:

<https://files.nc.gov/dpi/documents/schoolplanning/facility-design-guidelines.pdf>

- DPI School Science Facility Requirements:

<https://files.nc.gov/dpi/documents/schoolplanning/science-facilities-planner.pdf>

- DPI School Facility Closing Procedures:

<https://files.nc.gov/dpi/documents/schoolplanning/school-closing-procedure.pdf>

- For projects involving the demolition of an existing school building, follow the procedures noted above and submit the analysis required by [G.S. 115C-521\(c\)](#):

[https://files.nc.gov/dpi/documents/schoolplanning/costfeas\\_1.pdf](https://files.nc.gov/dpi/documents/schoolplanning/costfeas_1.pdf)

Please contact the NC DPI School Planning Section for questions and additional information regarding these requirements in Appendix III.