

## Synopsis of NC DPI Presentation: A Construction Journey: Federally Requirements for Construction (ESSER Projects)

Note: This document is intended to be a high-level summary of the information that needs to be considered when responding to COVID-19 and using ESSER related federal funding for construction projects. Sub-recipients of federal funds are expected to understand and apply the full requirements set forth in Uniform Guidance, EDGAR and related federal and state laws.

*A majority of the requirements below are applicable to general purchases made with federal funds. Some may have thresholds of applicability. The additional Construction related requirements are italicized.*



### Definition of Construction

- a. Is it construction? Construction vs. maintenance and repair vs minor remodeling. [NC DPI Federal Requirements: Construction Guide](#)



### 2. Planning and Approvals

- a. ESSER monies can be used for construction or equipment, pre-approval in grant application is required § 200.439
- b. *Must have full title or other interest for a period of at least 50 years or useful life, whichever is longer § 75.603*
- c. *Know applicable construction management:*
  - a. *Construction management at risk (CMAR) procurement cannot comply with Uniform Guidance requirements*
  - b. *For Construction, avoid Consortium and co-operative agreements*
  - c. *Design Build Contracts must consider price allowed per FY22 Budget Technical Correction*
- d. *Preserve historic sites as applicable § 75.602*



### 3. Procurement Steps

- a. Follow Uniform Guidance which requires § 200.318-327:
  - a. Documented procurement procedures to show how costs are allowable and in alignment with 2 CFR 200 subpart E
  - b. Written standards concerning conflicts of interest 200.318c
  - c. Avoid unnecessary or duplicate items 200.318d
    - i. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.
    - ii. An analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach
  - d. Meet competitive requirements for informal and formal procurement 200.319;200.320
  - e. Procurement and competitive requirements must be in accordance with Uniform Guidance and State statues, for LEAs 200.319;200.320; NCGS 143-129, 143-131



- f. Costs must be reasonable, necessary and allocable 200.403; 200.404
- b. Contractor oversight is required 200.318b
- c. *Include Bonding Requirements as applicable (State and Federal requirements differ) § 200.326*
- d. Check for debarred and / or suspended vendors (SAM) (at minimum contracts > \$25k) §180.220 and §180.300
- e. Must include small and minority businesses, women’s business enterprises and labor surplus areas 200.321/ *Follow HUB Requirements when contracts >\$300,000 NCGS G.S. 143-131(b)*
- f. Include domestic preferences 200.322
- g. Perform a cost and / or price analysis >\$250k 200.324a
- h. *Select Architectural and Engineering services based on competitive demonstrated competence and qualifications 200.320(iv)*
- i. *Consider a value engineering clause 200.318(g)*
- j. *Contingency clauses are allowable 200.3*
- k. Document the RFP 200.320b(2):
  - i. Formal Request for Proposal (depends on contract size)
  - ii. Must have written method for evaluating vendor proposals
  - iii. Publicize RFP
  - iv. Exercise due diligence in solicitation
  - v. Solicit proposals from an adequate number of qualified offerors
  - vi. Evaluate for the responsible offeror with price as a factor



**l. Document bidding 200.320b(1):**

- i. Solicited from adequate number of bidders
- ii. Publicly advertised
- iii. Public opening of bids
- iv. Award to lowest responsive responsible bidder
- v. May reject any bid for any qualified reason

- m. Award contracts to responsible contractors 200.318h
- n. Avoid time and material contracts, unless no alternative 200.318j
- o. Maintain a procurement file and adequate records 200.318

**4. Contracting**

- a. Contracts must include the applicable provisions in [appendix II to 2 CFR 200](#) 200.327

**5. Design Phase**

- a. *Follow NC DPI Construction Requirements [School Construction | NC DPI](#)*
  - i. *Obtain NC DPI Certificate of Review*
- b. *Comply with health and safety standards 75.609*
- c. *Provide for access by the handicapped 75.610*
- d. *Avoid flood hazards 75.611*
- e. *Consider energy conservation 75.616*
- f. *If HVAC project is involved, ASHRAE involvement is required 75.616*





- g. *A registered architect and / or registered engineer shall prepare drawings and specifications 200.320(2)(iv)*
- h. *More information on NC Requirements: [Legislative References | NC DPI](#)*

## 6. Build/Construction Phase

- a. Consider environmental impact, although not required for ESSER projects 75.601
- b. Continued contractor oversight is required 200.318b
- c. Plan for ESSER periods of performance 200.403g



## 7. Post Construction Phase

- a. Ensure funds are available for operations, maintenance, and insurance
- b. Include buildings and land in the list of Capital Assets / Equipment 200.1
- c. Maintain logs of detailed property records 200.313d
- d. On-going interest expenses are not allowed 200.313d
- e. Have and follow a detailed maintenance plan 75.615
- f. Title remains with the sub-recipient 200.311
- g. Sub-recipient is the trustee of the property for the beneficiaries of the approved project or program 200.311
- h. Property must be used for the intended purpose or contact NC DPI on instructions for disposition actions based on Uniform Guidance. 200.311



### References to Regulations:

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

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

[NC DPI Federal Requirements: Construction Guide](#)