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


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

75.601

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