

Federal Education Funding for Construction, Renovations, Remodeling Project

In late May the US Department of Education released Frequently Asked Questions about how funding under ESSER Funds, including the American Rescue Plan, may be used in response to the impact of the coronavirus disease pandemic on students in pre-K–12 education.

https://oese.ed.gov/files/2021/05/ESSER.GEER_FAQs_5.26.21_745AM_FINALb0cd6833f6f46e03ba2d97d30af953260028045f9ef3b18ea602db4b32b1d99.pdf

Purpose ESSER of Funds

- Reasonable and necessary costs to meet the overall purpose of the program, which is “To prevent, prepare for, and respond to” the COVID-19 pandemic.

Construction Definition

- The broad Impact Aid definition of “construction” includes new construction as well as remodeling, alterations, renovations, and repairs.

- Must comply with
 - Davis-Bacon prevailing wage requirements
 - <https://www.dol.gov/agencies/whd/government-contracts/construction/guidance>
 - EDGAR Regulations regarding construction at 34 CFR § 76.600 and 75.600-75.618.
 - Uniform Grant Guidance (UGG) requirements
 - US Department of ED's UGG and EDGAR website
 - <https://www2.ed.gov/policy/fund/reg/edgarReg/edgar.html>

- All remodeling or construction contracts using laborers and mechanics financed by Federal education funds for minor remodeling, renovation, repair, or construction contracts over \$2,000 must meet all Davis-Bacon prevailing wage requirements and include language in the contracts that all contractors or subcontractors must pay wages that are not less than those established for the locality of the project (prevailing wage rates).

- Requires the Prior Written Approval of the SD DOE. 2 CFR 200.439
- Must Comply with Cost Principles. 2 CFR Part 200 Subpart E
 - Necessary and reasonable.
- LEAs must follow the Real Property and/or Equipment Management Rules.
 - 2CFR 200.311 and 200.313
- Federal and State Procurement Rules Apply (Must use most restrictive)
 - 2 CFR 200.317-327
 - Buy America Act 2 CFR 200.322

- 2 CFR 200.322 Domestic Preferences for Procurements
 - 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

- 2 CFR 200.319 Competition
 - conducted in a manner providing full and open competition
 - contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing
 - must have written procedures for procurement transactions
 - must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition

UGG 2 CFR 200.320(a)

- **Micro Purchases up to \$10,000 *** - awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly.
- Simplified Acquisition up to \$250,000 - price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate
- *** Correction – Micro purchase limit is \$10,000. LEA can self-certify up to \$50,000 if they meet the special conditions listed in 200.320(a)(iv)**

- Formal Procurement Methods.
 - Require following documented procedures.
 - Require public advertising unless a non-competitive procurement can be used.
 - The sealed bids is the preferred method for procuring construction.
 - See 2 CFR 200.320(b) for detailed requirements

UGG 2 CFR 200.320 (c)

- Noncompetitive Procure only if the following apply.
 - 1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold
 - 2) The item is available only from a single source
 - 3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation
 - 4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity
 - 5) After solicitation of a number of sources, competition is determined inadequate

- Consistent with 200.300(c)(3)
- US ED FAQ # C - 27
- An LEA may determine that its response to the COVID-19 pandemic qualifies as a public exigency or emergency that does not permit the delay that would result from competitive bidding. Under these circumstances, and to the degree doing so is consistent with its own policies and procedures, an LEA could use noncompetitive procurement. The LEA should consult with its SEA before using this authority.

EDGAR Requirements

- Education Department General Administrative Regulations (EDGAR)
- Part 76.600 and 75.600 – 75.618
 - Covers Construction Requirements

- §75.601 - Has the grantee completed an environmental impact assessment before initiating the construction and fully considered any potential environmental ramifications before proceeding with the project?
- §75.602 - Has the grantee considered the probable effects of proposed construction on any district, site, building, or structure that is included or eligible for inclusion in the National Register of Historic Places?
- §75.603 - Does the grantee have title or other interest in the site, including right of access?

- §75.605 Can the grantee begin the approved construction in a reasonable time period and have the final plans been approved before the construction is advertised or placed on the market for bidding?
- §75.606 - Can a grantee complete the project in a reasonable time period and consistent with the approved plans and specifications?
- §75.607 - Is the construction functional, economical, and not elaborate in design or extravagant in the use of materials as compared to other facilities in the State or other applicable geographic area?

- §75.609-10 – Do the grantee’s plans and designs for the facilities comply with applicable Federal, State and local health and safety standards, as well as Federal requirements regarding access by persons with disabilities?
- §75.614-15 - Does the grantee have sufficient operational funds to operate and maintain the facility once the construction is complete and will the grantee operate and maintain the facility in accordance with all applicable Federal, State, and local requirements?

- §75.616 - Design facilities to maximize the efficient use of energy, and
- HVAC Systems - Requires the use of American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) standards.

Construction Concerns

- Last day to obligate funds September 30, 2024
- Other items for consideration:
 - What happens if there are construction delays?
 - Simultaneous Demand
 - Labor and Materials Shortages
 - To be allowable all costs must be incurred during the grant budget period.
 - US Department of Education does not have the authority to extend the period of availability.
 - The LEA should have a back up plan to use funds within grant period.