

Capital Improvement and Construction with Federal Funds

Subrecipients that propose to use Elementary and Secondary School Emergency Relief (ESSER) funds for construction must also comply with all applicable federal requirements. These requirements include mandatory submissions, reviews, and approvals both prior to procurement, and following execution of a contract. Failure to fully comply with any step or requirement will result in the denial or return of applicable federal funds. Below is a partial list of select Education Department General Administrative Regulations (EDGAR), Uniform Grant Guidance (UGG), and other applicable conditions to increase grantees awareness of these requirements and inform their application planning and submission process.

Overview of Select Requirements:

1. Prior Written Approval of the State Educational

Before construction is advertised or placed on the market for bidding, the grantee shall get approval by the state education agency of the final working drawings and specifications. (34 CFR 75.605 and 2 CFR 200.407)

2. Davis-Bacon Prevailing Wage Requirements

- a. 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.
- b. Contractors must be required to pay wages not less than once a week.
- c. District must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation.
- d. Contract must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145),
- e. District must report all suspected or reported violations to the Federal awarding agency.

3. Assessment of Environmental Impact

District shall include with its application its assessment of the impact of the proposed construction on the quality of the environment in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 and Executive Order 11514 (34 FR 4247).

4. Contract Work Hours and Safety Standards Act

- a. Contracts 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).
- b. Contractor must be required to compute the wages of every mechanic and

laborer on the basis of a standard work week of 40 hours.

- c. 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.
- d. No laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

5. Preservation of Historic Sites Must Be Described in the Application

District 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.

6. 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)

7. 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.

8. Energy Conservation

- a. District shall design and construct facilities to maximize the efficient use of energy.
- b. See the following standards of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE): (1) ASHRAE-90 A-1980 (Sections 1-9); (2) ASHRAE-90 B-1975 (Sections 10-11); (3) ASHRAE-90 C-1977 (Section 12).

9. Equal Employment Opportunity

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."

10. Clean Air Act and the Federal Water Pollution Control Act

- a. 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).
- b. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

11. Debarment and Suspension

A contract award 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.

12. Byrd Anti-Lobbying Amendment

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.

Additional details, resources, guidance, and training opportunities will continue to be posted to <https://www.ksde.gov/Agency/Division-of-Learning-Services/Special-Education-and-Title-Services/Federal-Disaster-and-Pandemic-Relief> as they become available.

For more information, please contact KSDE staff at esser@ksde.gov.