

Desk Reference for South Dakota's Use of State and Local Fiscal Recovery Funds: Complying with Federal Uniform Guidance

The purpose of this desk reference is to summarize federal Uniform Guidance requirements¹ that are applicable to South Dakota in its use of the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) as established by the American Rescue Plan Act (ARPA). The scope of this desk reference does not include other ARPA funding streams or programs, such as the Capital Projects Fund.

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¹ To access the complete guidance, copy and paste this link into your web browser:
<https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1>

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0. Using this guide

The purpose of this guide is to summarize federal requirements and best practices applicable to State and Local Fiscal Recovery Funds (SLFRF). However, the guide should not serve as a substitute for reviewing the applicable federal guidance outlined in section 1.

1. Read and comply with applicable guidance and regulations

The U.S. Department of Treasury (“Treasury”) has published the [Final Rule](#) for the SLFRF program. The Final Rule is the administrative regulation that governs how SLFRF funds may be used, and the conditions attached to the funds. Recipients are expected to read, understand, and comply with the guidance and supplementary information, including the [Frequently Asked Questions](#) and [Compliance and Reporting Guidance](#). Recipients are also encouraged to consult the [Final Rule Overview](#).

Treasury may publish additional supplementary materials and updates to their [website](#). To sign up for email updates, select “Receive COVID-19 Relief Updates” on Treasury’s website.

Treasury’s guidance specific to SLFRF should be read alongside the [Uniform Guidance \(2 CFR Part 200\)](#), which is a set of federal rules (administrative requirements, cost principles, and audit guidelines) that apply to federal money. Nearly all provisions of the Uniform Guidance apply to SLFRF, including sections related subrecipient monitoring and management, internal controls, financial management, record retention, and audit requirements. Recipients and subrecipients are responsible for following Uniform Guidance and agree to be bound by it when signing a subrecipient/grant agreement.

Summary of Key Areas of Uniform Guidance

Category	Key Points
Allowable Activities	<p>Allowable uses of funds can be found in detail in Appendix I of the SLFRF Compliance and Reporting Guide. Those allowable uses that are relevant to recipients are summarized below:</p> <p><i>EC 1: Public Health</i> – Consists of 14 subcategories and covers projects that are taking actions to control spread, support hospitals and health care workers, testing, contact tracing, public health data systems, vaccination programs, health care capacity enhancements, ventilation in congregate settings, etc.</p> <p><i>EC 2: Negative Economic Impacts</i> – Consists of 37 subcategories and covers any direct response to COVID or the after-effects of COVID, assistance as a result of a negative impact of COVID, relief for individuals, households, hardest-hit communities, small businesses, as well as aid to impacted industries such as tourism, travel and hospitality (other industries require additional data and justification).</p> <p><i>EC 3: Public Sector Capacity</i> – Consists of 5 subcategories and covers public sector workforce, such as payroll and benefits for public health, public sector, or human service workers and rehiring public sector staff. EC 3 also covers public sector capacity, including effective service delivery and administrative needs.</p> <p><i>EC 4: Premium Pay</i> – Consists of 2 subcategories and covers premium pay projects for public sector employees and grants to other employees in the private sector.</p> <p><i>EC 5: Infrastructure</i> – Consists of 21 subcategories and covers projects that are making necessary investments in water, sewer, or broadband infrastructure.</p> <p><i>EC 6: Revenue Replacement</i> – Consists of 2 subcategories for the provision of government services to the extent of the reduction in State revenue. If there is no COVID connection and it does not fit into one of the other categories this is available, but it is the least favored as there is a dollar limit on what can come from this bucket.</p> <p><i>EC 7: Administrative</i> – Consists of 2 subcategories and covers administrative expenses and transfers to other unites of government.</p> <p>Recipients should regularly review Treasury’s guidance to ensure that funded activities are compliant with the latest version of the grant guidance, which may be updated over time. For more information and guidance about allowable uses of Local Fiscal Recovery Funds and reporting requirements, please see the U.S. Treasury’s website.</p>
Allowable Costs/Cost Principles	<p>Recipients should ensure that grant spending adheres to the allowable costs/cost principles laid out in the SLFRF guidance by Treasury. These principles include the following rules, which both prime recipients and subrecipients must follow:</p> <ul style="list-style-type: none"> • Matching/Pooling Funds: SLFRFs may be paired with other funding sources for a given project. Recipients may combine funds and work to fund an eligible project. • Audit Costs: SLFRFs may be used for a “reasonably proportionate” share of the costs of required for federal single audits performed in accordance with the Uniform Guidance (2 CFR Part 200, Subpart F). • Administrative Costs: A portion of SLFRF may go to direct and indirect administrative costs. Subrecipients should be consistent in their treatment of

	<p>direct or indirect costs and should not charge the same costs to both categories or to other programs (i.e., no duplication of benefit).</p> <ul style="list-style-type: none"> ○ <u>Note on Negotiated Indirect Cost Rates (NICRAs)</u>: If a subrecipient has an indirect cost rate for federal funding that is approved and current, then the recipient may use its NICRA. If the recipient does not have a NICRA, then administrative costs should not exceed 10 percent of the modified total direct costs according to 2 CFR 200.414(f) (e.g., the <i>de minimis</i> indirect cost rate). ● <u>Salaries and Expenses</u>: SLFRF funds may be used to pay for certain employees' wages, salaries, and covered benefits. Refer to the Final Rule for more detail. <p>The following definitions apply to SLFRFs:</p> <ul style="list-style-type: none"> ● Administrative costs may include consultant costs to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements. ● Direct costs include the costs of implementing the SLFRF program objectives, such as contract support, materials, and supplies for a project. ● Indirect costs are general overhead costs of an organization where a portion of such costs is allocable to the SLFRF award, such as the cost of facilities or administrative functions like a director's office.
Cash Management	<p>SLFRFs may be placed in interest-bearing accounts. If interest is earned from SLFRF funds, that interest does not need to be remitted to Treasury and use of the interest is not limited to the eligible uses laid out by Treasury.</p>
Equipment and Real Property Management	<p>Recipients, whether using funds as a prime recipient or when monitoring a subrecipient, should ensure use of equipment for the authorized purpose of the SLFRF funds during the period of performance from March 3, 2021 and December 31, 2026, or until the property is no longer needed for the project. When the property is no longer needed, the equipment may be used in other activities supported by Treasury, in the following order of priority:</p> <ul style="list-style-type: none"> ● Activities under ARPA-SLFRF under Treasury, which funded the original program or project, then ● Activities under federal awards from other federal awarding agencies. This includes consolidated equipment for information technology systems. <p>The subrecipient must also make equipment available for use on other projects or programs currently or previously supported by the federal government if the use doesn't interfere with SLFRF projects or programs.</p>
Procurement and subrecipients	<p>Recipients can use their SLFRF funds to either issue subgrants or enter into contracts. Additional detailed guidance on how to do this under Uniform Guidance requirements is detailed below in the "Follow local, state, and federal procurement standards and create compliant contracts" and "Assess subrecipient risk and engage in subrecipient monitoring" section.</p> <p>Recipients may also directly set up a beneficiary program.</p>

Period of Performance	<p>The following timeframes apply to use of the funds:</p> <p style="text-align: center;"><u>Timeframe to award (obligate) funds:</u> March 3, 2021- December 31, 2024 <u>Timeframe to expend (liquidate) funds:</u> December 31, 2026</p> <p>Grant spending outside of the above timeframes will be considered non-compliant and may result in enforcement actions such as requiring repayment of applicable grant funds to the prime recipient or Treasury. In cases where funds are acquired under prime recipient status through Local Fiscal Recovery Funds, non-executed funds may need to be reimbursed to Treasury. In cases where there is projected underspending by subrecipients that the State is monitoring, the State may re-allocate funding to another project or eligible use.</p>
Recordkeeping Requirements	<p>Financial records and supporting documents related to the award must be retained for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.</p>
Single Audit	<p>The State, as a prime recipient and any subrecipient that is being monitored, that expends more than \$750,000 in federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements.</p>
Reporting	<p>Recipients should maintain accounting records for compiling and reporting accurate, compliant financial data, using appropriate accounting standards and principles. This includes collecting the same information for any subrecipients being monitored by the state. Use of a financial management system is strongly recommended.</p> <p><i>Note: For recipients that are utilizing other funding sources for a program that is also funded with SLFRF, it is recommended to identify the receipts and expenditures of program funds separately for each award in the accounting system. This will allow for financial reporting data to be more easily itemized.</i></p>

Best Practices:

- *Review and become familiar with all applicable federal guidance and regulations, including the Final Rule, Compliance and Reporting Guidance, and the Uniform Guidance*
- *Sign up for U.S. Treasury email updates*
- *Consult with professionals to understand applicable requirements*

2. Understand the differences between a prime recipient, a subrecipient, a contractor, and a beneficiary

A **prime recipient** is an entity that receives grant funding directly from a grantor (such as the federal government). For the purposes of SLFRF, the State of South Dakota is considered a prime recipient. Municipalities and counties, including Non-Entitlement Units (NEUs) are also prime recipients of SLFRF.

In some cases, a prime recipient of SLFRF will choose to pass all or a portion of the SLFRF funds they received on to another organization to carry out the “mission of the money” by administering a project or program on behalf of the prime recipient. **Subrecipient** is the official term given to organizations that receive this kind of federal grant funding as a subgrant. Notably, a subrecipient may choose to subgrant funds to a secondary subrecipient. For example, a subrecipient who is a state agency might subgrant funds to a municipality or other entity to carry out a project. In these cases, the primary subrecipient is creating a subrecipient relationship with a secondary subrecipient. It is important to understand that all federal SLFRF requirements applicable to recipients are also applicable to subrecipients and secondary subrecipients.

A **contractor** is simply an entity that receives a contract (other than a subaward or subgrant). A contract is a legal instrument by which a prime recipient or subrecipient would purchase property or services needed to carry out the eligible uses of SLFRF.

If a prime recipient or subrecipient provides funds to an organization or an individual for its/their own use, e.g., business interruption, salaries, weatherization, food assistance etc., those entities/people would typically be considered **beneficiaries**. Beneficiaries differ from subrecipients and contractors in that there is no ongoing expectation for them to carry out a program (i.e., subrecipient) or provide goods/services to the government in return for the funds provided.

The required content for a written agreement to expend SLFRF varies depending on whether the entity is a contractor, subrecipient, or beneficiary. Recipients should review the table below to determine the type of relationship.

Key Attributes of Subrecipients, Contractors and Beneficiaries

Entity	Attributes
Subrecipient	<ul style="list-style-type: none"> • May determine who may be eligible to receive federal assistance under the program guidelines. • Has performance measured in terms of meeting federal program objectives • Has responsibility for programmatic decision-making. • In accordance with its subaward agreement (which may be in the legal form of a contract), the subrecipient uses the federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the recipient. • The subrecipient will not earn a profit under the arrangement. • The subrecipient may be required to contribute cash or in-kind match in support of the subaward.
Contractor	<ul style="list-style-type: none"> • Provides goods and services within normal business operations. • Provides similar goods or services to many different purchasers. • Normally operates in a competitive environment. • Provides goods or services that are ancillary to the operation of the federal program. • The entity may earn a profit under the contract.
Beneficiary	<ul style="list-style-type: none"> • Is the end recipient of SLFRF resources. • Is receiving funds for the purpose of directly benefitting the individual or entity as a result of experiencing a public health impact or negative economic impact • SLFRF beneficiaries may include the following: <ul style="list-style-type: none"> ○ Individuals/families ○ Small businesses ○ Public nonprofit institution/organization (if receiving assistance for eligible uses such as economic support for impacted industries) ○ Private nonprofit institution/organization (if receiving assistance for eligible uses such as economic support for impacted industries)

Best Practices

- *Prior to entering into a contract, subrecipient agreement, or beneficiary agreement with an entity, review the terminology to ensure you have correctly categorized your relationship with the entity.*
- *Consult with professionals to draft appropriate agreements, including any provisions that should flow down to the subrecipient or other agreements.*

3. Establish robust internal controls

Internal controls are processes designed and implemented to provide reasonable assurance that the non-federal entity (i.e. recipient or subrecipient) is managing the award in compliance with all applicable

statutes, regulations, and terms and conditions. When assessing and establishing internal controls, recipients should consider the following objectives:

1. Effectiveness and efficiency of operations
2. Financial stewardship and accountability
3. Reliability of reporting for internal and external use
4. Compliance with applicable laws and regulations

As required by [2 CFR 200.303](#), recipients must create internal controls to mitigate risks and prevent fraud, waste, and abuse. These include, for example, written policies and procedures and ongoing validation of compliance with policies. Treasury has described some best practices for development of internal controls in **table 1**.

Table 1: Internal controls best practices

Best Practice	Description	Example
Written policies and procedures	Formal documentation of recipient policies and procedures	Documented procedure for determining worker eligibility for premium pay
Written standards of conduct	Formal statement of mission, values, principles, and professional standards	Documented code of conduct / ethics for subcontractors
Risk-based due diligence	Pre-payment validations conducted according to an assessed level of risk	Enhanced eligibility review of subrecipient with imperfect performance history
Risk-based compliance monitoring	Ongoing validations conducted according to an assessed level of risk	Higher degree of monitoring for projects that have a higher risk of fraud, given program characteristics

Internal controls should be in compliance with one of two approved frameworks:

1. The Government Accountability Office (GAO) Standards for Internal Control in the Federal Government (commonly called “the Green Book”); or,
2. The Committee of Sponsoring Organizations of the Treadway Commission (COSO) framework.

Best Practices:

- *Assess and bolster your organization’s existing internal controls for compliance with the GAO’s Green Book or COSO*

4. Use a financial management system to track assets and expenditures

Recipients should maintain accounting records for compiling and reporting accurate, compliant financial data, using appropriate accounting standards and principles. Use of a financial management accounting system (for example, QuickBooks, or a Custom Proprietary System) is strongly recommended.

Per [2 CFR 200.302](#), a compliant financial management system must be able to:

- Track federal awards and related expenditures separately
- Provide accurate, current, and complete financial data to enable the disclosure of the results of each federal award
- Identify the source and application of funds (i.e., the system must be capable of tracing/tracking funds to tie to eligible uses of SLFRF).
- Maintain effective control over, and accountability for, all funds, property, and other assets
- Compare expenditures with budgeted amounts
- Be supported by the entity's written procedures for determining the allowability, reasonableness, and allocability of costs.

For recipients who are funding a project with SLFRF and another source of funds, recommended practice is to identify the receipts and expenditures of funds separately for each award in the accounting system (this can be accomplished by using separate funds, department or project codes, classes, etc.) This will allow for financial reporting data to be more easily itemized.

Best Practices:

- *Utilize a financial management system that meets the standards outlined in 2 CFR 200.302*
- *If a project has multiple sources of funding, ensure receipts and expenditures are tracked separately for each funding stream*

5. Develop a compliant document retention policy

Recipients should ensure they are maintaining appropriate documentation to support all uses of SLFRF. The recipient is required to maintain records and financial documentation sufficient to evidence compliance with all applicable guidance and regulations. Records must be maintained for a period of five (5) years after all funds have been expended.

U.S. Treasury or the State of South Dakota may require documentation to demonstrate compliance related to the SLFRF award. The list below provides examples of documents that may be requested:

- a. Policies & procedures for the administration of federal funds
- b. Organization charts for all relevant administrative functions
- c. Monitoring or audit reports
- d. General ledger and subsidiary ledgers used to account for (a) the receipt of SFRF payments and (b) the disbursements from such payments to meet eligible expenses
- e. Budget records;
- f. Payroll, time records, human resource records to support costs incurred for payroll expenses related to the SLFRF award;
- g. Invoices for and receipts of purchases made related to the SLFRF award
- h. Contracts and subcontracts entered into using SLFRF payments and all documents related to such contracts;
- i. Grant agreements and grant subaward agreements entered into using SLFRF payments and all documents related to such awards;

- j. All procurement-related materials, including requests for proposal, scoring materials, records of negotiations;
- k. All documentation of reports, audits, and other monitoring of contractors, including subcontractors, and grant recipient and subrecipients;
- l. All documentation supporting the performance outcomes of contracts, subcontracts, grant awards, and grant recipient subawards;
- m. All internal and external email/electronic communications related to use of SLFRF payments; and
- n. All investigative files and inquiry reports involving SLFRF payments.

Best Practices:

- *Develop a written document retention policy*
- *Establish an electronic document repository for the grant materials and provide access to more than one person*
- *Maintain documents for a minimum of 5 years after all SLFRF funds have been expended*

6. Follow local, state, and federal procurement standards and create compliant contracts

When recipients enter into contract procurements with SLFRF, they are required to follow all federal procurement rules outlined in the Uniform Guidance ([2 CFR 200.318-200.327](#)) as well as their own internal policies. Where established local or state rules are stricter than the federal rules, the recipient must follow those stricter rules. Recipients, however, need to be aware that procurement policies differ if the recipient itself is conducting the procurement, or the recipient awards funds to a subrecipient, who then conducts a procurement.

Prior to issuing any bid documents for contracts to be funded with SLFRF, recipients should carefully review all applicable local, state, and federal rules and requirements.

Generally, all procurement transactions for the acquisition of property or services under a federal award must be conducted in a manner providing full and open competition. The recipient must have and use documented procedures for any methods of procurement.

Federal Procurement Methods under the Uniform Guidance

(Note: if other applicable policies call for lower thresholds than the federal thresholds, the stricter policies must be followed)

Guidance for subrecipients who conduct the procurement (recipient subgrants the funds)

In addition to the state’s own procedures, subrecipients are required to adhere to three sections of Uniform Guidance and include certain required federal contract language.

The three sections subrecipients must comply with are:

- 2 CFR 200.321—requiring that the recipient take affirmative steps to encourage contracting with small and minority businesses, women enterprises, and labor surplus area firms.
- 2 CFR 200.322—requiring that, to the extent possible under federal award, the recipient give preference to domestic purchases, acquisitions, or use of goods, products, or materials made in the United States.
- 2 CFR 200.323—requires that the county and any contractors comply with section 6002 of the Solid Waste Disposal Act, and that they procure only items that contain the highest percentage of recovered materials practicable and while maintaining an appropriate level of competition as well as procuring waste management services such a way that it maximizes energy and resource recovery.

Additionally, any subrecipients of the recipient funding must comply with procurement standards in 200.318 through 200.327 described below. The recipient is responsible for monitoring the compliance of any subrecipients.

Informal Procurements

(1) Micro-purchases: if the purchase is below the micro-purchase threshold (\$10,000), the purchase may be made without soliciting competitive price or rate quotations (though the price must still be “reasonable”). Recipients should distribute micro-purchases equitably among qualified suppliers.

(2) Small purchases: if the purchase is below the simplified acquisition threshold (\$250,000), price or rate quotations must be obtained from an adequate number of qualified sources, though a cost or price analysis is not required. Recipients should distribute small purchases equitably among qualified suppliers.

Competitive Procurements (all purchases over \$250,000)

Formal procurement methods require following documented procedures. The following formal methods of procurement are used for procurement of property or services, usually through a process known as a “Request for Proposals” or RFP. RFPs must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical.

(1) Sealed bids. Bids are publicly solicited and a firm fixed-price contract is awarded to the responsible bidder whose bid is the lowest in price. The sealed bids method is the preferred method for procuring construction.

(2) Proposals. A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

- I. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified

offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

- II. The non-federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;
- III. Contracts must be awarded to the responsible offer or whose proposal is most advantageous to the non-federal entity, with price and other factors considered; and
- IV. 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. 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.

Non-Competitive Procurements

(1) Sole source: noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

- (a) The item is available only from a single source;
- (b) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
- (c) The Federal awarding agency or the pass-through entity (the State of South Dakota) expressly authorizes a noncompetitive procurement;
- (d) After solicitation of a number of sources, competition is determined inadequate.

Guidance for Recipient (who is not conducting the procurement)

In addition to following federal and state procurement policies, the recipient is responsible for ensuring any relevant clauses outlined in [Appendix II to 2 CFR 200](#) are included in purchases orders and contracts. Appendix II outlines the contract provisions for non-federal entity contracts under federal awards to be utilized where relevant. Additionally, construction contracts in excess of \$2,000 that are not funded solely with SLFRF must include a provision for compliance with the Davis-Bacon Act, providing that workers will be paid the higher of the prevailing wage rates determined by the U.S. Secretary of Labor and the State of South Dakota. Projects funded solely with SLFRF are not required to include this provision; however, recipients should be mindful of the labor reporting requirements for infrastructure projects found on page 26 of the [SLFRF Reporting and Compliance Guidance](#). Subrecipients (not NEUs) undertaking construction projects in excess of \$10 million will be required to provide these indicators to the State of South Dakota.

Creating a contract that complies with federal contract provisions will require including the below sections where applicable ([Appendix II to 2 CFR 200](#)):

- a. Contracts must include administrative, contractual, or legal remedies to contract violation or breaches.

- b. Any contract that is more than \$10,000 must address the recipient's right to termination for cause and/or convenience. This language should include how it would go into effect as well as method for settlement should it go into effect.
- c. Construction contracts must include the language of the Equal Opportunity clause outlined in section [41 CFR § 60-1.4](#) of Uniform Guidance.
- d. 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. Note that infrastructure projects that are funded **solely** with SFLRF are not subject to including this provision. However, this clause may be of necessary note to contracts that are funded with other sources depending on the requirements of the alternative funding source. If awarding an infrastructure contract over \$10M, please review the detailed labor requirements that apply to such contracts in the [Compliance and Reporting Guidance](#).
- e. All contracts that are more than \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with the Contract Work Hours and Safety Standards Act. 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. In the case where the federal award constitutes a "funding agreement" where experimental, developmental, or research work is occurring and the contractor chooses to enter into an agreement with a non-profit or small business to conduct the contract, the contractor must comply with Rights to Inventions Made Under a Contract or Agreement ([37 CFR Part 401](#)).
- g. Contracts and subgrants over \$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. A contract cannot be awarded to parties that are listed on the governmentwide exclusions list in the System for Award Management (SAM). 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. Funds may not be used to influence the award of a contract funded with federal appropriations. Contractors that apply or bid for an award exceeding \$100,000 must file the certification required by the Byrd Anti-Lobbying Amendment.
- j. Procurement of recovered materials – Recipients and their contractors must comply with section 6002 of the [Solid Waste Disposal Act](#), as amended by the Resource Conservation and Recovery Act. Section 6002 requirements relate to procurement of items over \$10,000, and direct that recipients and their contractors only procure 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; 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 purchasing telecommunications or surveillance equipment, services, or systems produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities), or 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.
- l. The recipient should, as appropriate and to the extent consistent with law, include a provision for a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. Contractors must be aware of the source of materials used which include (but are not limited to) iron, steel, cement, and other manufactured products.

Recipients should ensure contractors and subrecipients over \$50,000 are registered in SAM.gov. Additional financial transparency reporting requirements apply to contractors and subrecipients who are not registered. Additionally, Appendix II to 2 CFR part 200 requires the non-federal entity to ensure that a contract is not made to a party that has been debarred or suspended in SAM.

Conduct standards should be established such that there are no conflicts of interest in administering contract agreements. Additionally, pursuant to [2 CFR 200.319\(b\)](#), if a firm assists in the development or drafting of specifications, statements of work, or bids or RFPs, the firm must be excluded from competing for the procurement.

Contractors are expected to perform duties according to the terms and conditions of their contract or purchase order. Once goods or services are procured, the recipient should ensure that there is adequate oversight over contractors to ensure that contracts are executed according to the contract terms, conditions, and specifications.

Best Practices

- *Comply with state and federal procurement standards and policies*
- *Include all federally required contract provisions in contracts funded with SLFRF. These are found at 2 CFR Part 200 Appendix II*
- *Ensure the procurement is conducted in a manner providing full and open competition by utilizing the appropriate procurement method and not allowing firms that assist in the development of specifications to compete for the contract*
- *Ensure contractors and subrecipients are registered in SAM.gov and in good standing*
- *Establish oversight procedures to ensure contracts are executed according to the terms, conditions, and specifications*

7. Assess subrecipient risk and engage in subrecipient monitoring

Pursuant to [2 CFR 200.332](#), any entity who subgrants SLFRF to a subrecipient is required to vet, manage, and monitor their subrecipient to ensure compliance with all federal requirements of the award. Recipients must be aware that they will be held liable for any mishandling or misuse of SLFRF funds by their subrecipient. The same requirements apply to a primary subrecipient making a subgrant to a secondary subrecipient.

When working with a subrecipient, it is the responsibility of the recipient to ensure that the subrecipient can carry out the project as required. The recommended method for evaluating a potential subrecipient's compliance capabilities is through a subrecipient risk assessment tool. Based on the outcome of the risk assessment, the recipient can design a monitoring plan that is tailored to the identified risks.

If Recipients choose to provide a **subgrant** to a subrecipient, the recipient must:

1. Evaluate the subrecipient:

Prime recipients, as pass-through entities as described in [2 CFR 200.332](#), are responsible for “vetting” the subrecipient. They should do their due diligence to be confident that the subrecipient is capable of carrying out the project as required.

2. Create a Subgrant Award Agreement:

- *Amount and purpose of the grant.* Subgrant agreements should specifically note how much is committed and to what purpose. Include the subrecipient name (which must match the name associated with its unique entity identifier), subrecipient’s unique entity identifier, federal award identification number (FAIN), program’s name as you will provide it to Treasury.
- *Award dates.* At the time of the subaward, the following information is required: Federal Award Date (see the definition of Federal award date in [§ 200.1 of this part](#)) of award to the recipient by the Federal agency), Subaward Period of Performance Start and End Date, and Subaward Budget Period Start and End Date.
- *Federal Award Information.* The following information is also required:
 - Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient
 - Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current financial obligation
 - Total Amount of the Federal Award committed to the subrecipient by the pass-through entity
 - Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA)
 - Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity
 - Assistance Listings number and Title; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement
 - Indication of whether the award is R&D
- *Notice of source of funds.* Prime recipients must let subrecipients know that they are receiving federal grant funding and must communicate all applicable grant rules and regulations to subrecipients.
- *Subgrant period and payment schedule.* For larger or more complex grants, the recipient may decide to pay the grant in installments, or on a reimbursement basis. If this is the case, the grant agreement explains when and under what conditions future payments will be made.
- *Allowance for changes.* Things can change, and your grant agreements should include language to account for that. You may need to add certain data to reporting requirements or change some of the parameters of the grant based on new Treasury guidance.
- *Requirements for internal controls.* Subrecipients must create internal controls to mitigate risks and prevent fraud/waste/abuse. These include, for example, written policies and procedures, ongoing validation of compliance with policies.
- *Performance goals.* Recipients should set and monitor performance goals, indicators, targets, and baseline data to determine if subrecipients are meeting performance expectations.
- *Access to records, sites, and financial statements.* The prime recipient must have access to the subrecipient’s records and financial statements, as necessary, to ensure compliance with the grant guidance.

Note that if a subrecipient maintains its financial records on anything other than an accrual basis, a prime recipient must not require a subrecipient to establish an accrual accounting system and must allow the subrecipient to develop accrual data for its reports on the basis of an analysis of the documentation on hand.

3. Monitor the subrecipient:

Prime recipients must monitor subrecipients, to ensure that they are following the requirements of the subgrant agreement. This may include reviewing financial records, ensuring that written policies are followed, and performing site visits.

The recipient must clearly identify to the subrecipient:

- (1) that the award is a subaward of SLFRF;
- (2) any and all compliance requirements for use of SLFRF; and
- (3) any and all reporting requirements for expenditures of SLFRF.

Components of a subrecipient monitoring plan must include:

- a. Reviewing financial and performance reports
- b. Following-up and ensuring that Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to Subrecipient detected through audits, on-site reviews, and other means.
- c. Issuing a management decision for audit findings pertaining to the Federal award provided to Subrecipient from Grantee as required by 2 CFR 200.521 Management decision.
- d. Verifying that subrecipient is audited as required by 2 CFR Part 200 Subpart F—Audit Requirements when it is expected that Subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 CFR 200.501 Audit requirements.

4. Intervene, If Necessary:

If a subrecipient does not comply with the rules, or if a prime recipient suspects fraud, waste or abuse is happening with grant funding, then the prime recipient must intervene, adjust their records to remove any unallowable costs, and consider certain enforcement actions. Ongoing monitoring of any given subrecipient should reflect its assessed risk and include monitoring, identification of deficiencies, and follow-up to ensure appropriate remediation

Best Practices:

- *Conduct a risk assessment for each subrecipient, and develop and execute a monitoring plan tailored to identified risks*
- *When sub-granting funds to a subrecipient, ensure all requirements set forth in 2 CFR 200.332 are included in the subaward agreement*

8. Understand requirements related to the purchase, use, and disposition of equipment and real property

Any purchase of equipment or real property with SLFRF funds must be consistent with [2 CFR 200.310-200.316](#). The title of equipment or property purchased with SLFRF funds rests with the purchaser, who must maintain insurance coverage for the equipment/property that is equivalent to other equipment/property held. Equipment must be inventoried at least once every two years.

The equipment/property must be utilized for the authorized project until it is no longer needed for the specific project. When the equipment/property is no longer needed for the project, the following actions must be taken:

Equipment – The equipment may be used for other SLFRF projects or activities supported by federal awards. If the recipient wishes to sell/dispose of equipment valued over \$5,000, they must request instructions from Treasury for one of the following options 1) retain/sell with no compensation, 2) sell and compensate Treasury, 3) Transfer title to Treasury or designated third party.

Real Property – If the recipient wishes to sell/dispose of real property, they must request instructions from Treasury for one of the following options 1) retain and compensate Treasury, 2) sell and compensate Treasury, 3) Transfer title to Treasury or designated third party.

Best Practices

- *Maintain insurance coverage for equipment and real property purchased with SLFRF*
- *Inventoried equipment at least every two years*
- *Ensure the equipment/property is utilized for the authorized project until it is no longer needed for that project*
- *When the equipment/property is no longer needed for the project, request instructions from Treasury, or reassign equipment to another project*

9. Prepare for an annual audit

Recipients and subrecipients who expend more than \$750,000 in federal awards during their fiscal year (SLFRF + all other federal funds), will be subject to an audit under the Single Audit Act and its implementing regulation at [2 CFR 200, Subpart F](#) regarding audit requirements.

The [Office of Management and Budget \(OMB\) Compliance Supplement](#) provides information on the existing, important compliance requirements that the federal government expects to be considered as part of such audit. Recipients should consult the [Federal Audit Clearinghouse](#) to see examples of Single Audit Submissions. SLFRF funds may be used to cover audit costs.

Best Practices

- *Review 2 CFR 200 Subpart F, the OMB Compliance Supplement, and the Federal Audit Clearinghouse to understand audit requirements*
- *If you will expend more than \$750,000 in federal awards during your fiscal year, budget for audit costs*

10. Understand reporting requirements and develop a process to collect required data

The SLFRF [Compliance and Reporting Guidance](#) is broken into two parts. Part 1 provides an orientation to compliance responsibilities, and part 2 provides information on the reporting requirements for the program.

Prime recipients will report directly to Treasury.

Unlike prime recipients, subrecipients will not submit reports directly to Treasury. However, subrecipients must assist the State of South Dakota in completing reports by providing all required project data elements. While the State will document processes, procedures, and templates for reporting, subrecipients should review the required project data elements and develop a plan to collect and submit the data to the State. Required project data elements vary based on the project's expenditure code. The list of data elements is found on pages 22-28 of the Compliance and Reporting Guidance. For example, for water and sewer projects that have begun construction, reporting requirements include: 1) Permit numbers for projects aligned with the Clean Water State Revolving Fund and the Drinking Water State Revolving Fund, 2) median household income of service area, 3) lowest quintile income of the service area.

Recipients and subrecipients undertaking construction projects should be mindful of the labor reporting requirements found on page 26 of the [Compliance and Reporting Guidance](#). These indicators are required for projects greater than \$10 million.

Further, recipients and subrecipients making a capital expenditure over \$1 million must develop and provide a written justification for the capital expenditure. A written justification includes:

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- *Description of the harm or need to be addressed.* Provide a description of the specific harm or need to be addressed and why the harm was exacerbated or caused by the public health emergency. Subrecipients may provide quantitative information on the extent and the type of harm, such as the number of individuals or entities affected.
- *Explanation of why a capital expenditure is appropriate.* For example, subrecipients should include an explanation of why existing equipment and facilities, or policy changes or additional funding to pertinent programs or services, would be inadequate.
- *Comparison of proposed capital project against at least two alternative capital expenditures and demonstration of why the proposed capital expenditure is superior.* Subrecipients should consider the effectiveness of the capital expenditure in addressing the harm identified and the expected total cost (including pre-development costs) against at least two alternative capital expenditures. Where relevant, subrecipients should consider the alternatives of improving existing capital assets already owned or leasing other capital assets.

Best Practices

- *Review the required project data elements that apply to your projects and develop a plan to collect and submit the data*
- *If you are undertaking a construction project or making a capital expenditure, prepare to meet the additional reporting requirements*