

Coronavirus State and Local Fiscal Recovery Funds

Frequently Asked Questions (FAQs) for ORS Broadband Program Stakeholders

This document contains answers to Frequently Asked Questions that apply to South Carolina Office of Regulatory Staff (SC ORS) contractors (ISPs). Answers were based on Guidehouse’s best understanding of agency goals and objectives, 2 CFR 200 (Uniform Guidance), Treasury Final Rule, Project & Expenditure Report User Guide and the most recent guidance from US Treasury published on July 27, 2022.

1. How will projects be defined?

Agencies may define “projects” however it works best to meet Agency program goals and objectives.

The Uniform Guidance defines projects under SLFRF as a grouping of closely related activities that together are intended to achieve a specific goal or are directed toward a common purpose. These activities can include new or existing services, funded in whole or in part by the SLFRF award. Each project must be associated with only one Expenditure Category. Agencies should refer to Appendix 1 of the State and Local Fiscal Recovery Funds [Compliance and Reporting Guidance](#) for a listing of all expenditure categories defined by the US Treasury.

If a single grant award to an applicant contains multiple projects, (e.g., a combination of water, sewer and stormwater projects), each project must be broken out by specific expenditure category when reporting back to the Treasury. Note, there may be an expenditure category that encompasses two project types (e.g. Expenditure Category 5.16 Water and Sewer: Private Wells).

2. Final Rule and 2 CFR 200 refer to contractors, recipients, subrecipients, subawards, and beneficiaries. Which best defines the relationship that my Agency will have?

[Final Rule](#) identifies four primary groups: recipients, beneficiaries, subrecipients, and contractors. In general, the State, or in the case of South Carolina, each Agency, is the recipient of federal funds. The State is the entity for reporting to the US Treasury.

Therefore, each State Agency may have beneficiaries, subrecipients, or contractors. A beneficiary is a household, small business, or nonprofit that receives direct assistance, typically in the form of cash assistance. Per P. 53 of [Final Rule FAQ](#), when recipients of SLFRF funds provide award funds to individuals or entities as a result of experiencing a public health or negative economic impact of the pandemic, those receiving such funding are beneficiaries of the funds.

A subrecipient is an entity that receives federal grant funding in the form of a subgrant from a prime recipient (prime recipient being a State Agency in this case), whereas a contractor is an entity that receives a contract (other than a subgrant/award) to carry out the eligible uses of SLFRF. If the Agency is defining the scope of work, then the awardee is a contractor, while if the awardee is defining the scope of work, then the awardee is a subrecipient.

Please refer to 2 CFR 200.331 for additional information on subrecipient and contractor determinations.

The relationship between ORS and the ISPs is that of a prime recipient and contractors.

3. Do contractors need to register with SAM.gov?

ORS is responsible for the contractors' compliance with registering and maintaining an updated profile on SAM.gov.

If the contractor is not registered in SAM.Gov, additional questions will be prompted for, as required by the Treasury ("Recipient" in these questions refers to the contractor):

- In its preceding fiscal year, did Recipient receive 80% or more of its annual gross revenue from federal funds?
- Confirmation that the proportion of the Sub-Recipient's federal funding-to-total annual gross revenue for the preceding fiscal year is at least 80%.

If BOTH questions are "yes", the Treasury asks if the total compensation for the recipient's five highest paid officers is publicly listed. If not, the entity will be required to report the total compensation for the five highest paid officers.

For ease of reporting, ORS will require contractors register in sam.gov.

4. What are some CMAR and Design-Build considerations?

In general, CMAR and Design-Build contracts are allowed if strong labor agreements are negotiated to mitigate risks, and costs are reasonable. Unlike A/E procurements, construction contracts must have a price associated with the contract when undergoing procurement. Some considerations are: Price as a selection factor for competitive proposals ([2 CFR 200.320\(d\)](#)), Cost or price analysis for all project costs ([2 CFR 200.323](#)), Independent estimates are required for projects over \$250,000 ([2 CFR 200.323](#)), Socioeconomic affirmative steps ([2 CFR 200.321](#)), Responsible contractors ([2 CFR 200.318\(h\)](#)), Full and open competition requirements ([2 CFR 200.319](#)), and Applicable requirements for procurement method being used under [2 CFR 200.320](#).

5. Can federal contracting requirements be added to existing contracts, such as those for CMAR or engineering or materials purchase?

Federal requirements can be added to existing contracts if they do not substantially alter the original contract. If the additions or modifications to the contract are within the scope of work, then they are allowed.

Federal requirements cannot be added if the modifications fall outside the scope of the contract, meaning that if the federal requirements substantially impact/alter the initial bidding and procurement processes, then a new contract is needed and thus a new procurement process must be conducted. So again, if the steps prior to contracting comply with federal standards and the modifications reasonably fall within the scope of work, then modifications or addendums are allowable.

6. Are indefinite delivery contracts acceptable for services like engineering (with appropriate procurement)?

Yes. Indefinite delivery contracts are allowable if the following is included within the solicitation and contract for an indefinite quantity:

(i) Specify the period of the contract, including the number of options and the period for which the entity may extend the contract under each option;

(ii) Specify the total minimum and maximum quantity of supplies or services the entity will acquire under the contract;

(iii) Include a statement of work, specifications, or other description, that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services the entity will acquire under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;

(iv) State the procedures that the entity will use in issuing orders, including the ordering media, and, if multiple awards may be made, state the procedures and selection criteria that the entity will use to provide awardees a fair opportunity to be considered for each order;

(v) Include a description of the activities authorized to issue orders; and

(vi) Include authorization for placing oral orders, if appropriate, provided that the entity has established procedures for obligating funds and that oral orders are confirmed in writing.

Further, the procurement of these contracts must be consistent with the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327, as applicable.

7. Are multi-year contracts that were initially entered into prior to March 3, 2021 allowed?

Multiyear contracts pre-March 2021 which meet federal procurement guidelines consistent with the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327 are allowable. The contracts may need to be amended to include

all additional [2 CFR](#) requirements, and have task orders that comply with existing and future federal requirements—and only cover costs from that date onward. [Orders](#) shall be within the scope, issued within the period of performance, and be within the maximum value of the contract.

8. Can we allow contractors to pull material (purchased prior to March 2021) from inventory, and reimburse for those costs?

Yes, eligible expenses include construction and materials, whether pulled from existing inventory or purchased during the construction window. Costs must be reasonable and allocable as outlined in [2 CFR 200.404](#) and [2 CFR 200.405](#). A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. However, the following is not eligible: Equipment that is depreciable and has a useful life after project completion.

9. If an engineer has been competitively procured for preliminary design and cost estimates, are they prohibited from being able to work on a project if funded?

Per [2 CFR 200.319](#), in order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

10. Does the Davis-Bacon Act apply to SLFRF funds?

Per P. 39 of [Final Rule FAQs](#), if a project is funded solely with SLFRF, State, Local or private dollars then federal Davis-Bacon requirements are not triggered. If any other federal dollars from sources other than SLFRF are used (including matching funds), then Davis-Bacon requirements are triggered.

Additionally, for projects over \$10 million (based on expected total cost), a recipient may provide a certification that, for the relevant project, all laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as “baby Davis-Bacon Acts”).

If such certification is not provided, a recipient must provide a project employment and local impact report detailing:

- The number of employees of contractors and sub-contractors working on the project;
- The number of employees on the project hired directly and hired through a third party;
- The wages and benefits of workers on the project by classification; and
- Whether those wages are at rates less than those prevailing.

Recipients must maintain sufficient records to substantiate this information upon request.

Exhibit N addresses the requirements for projects over \$10 million.

11. Does Build America/Buy America (BABA) apply?

Per P. 43 of [Final Rule FAQs](#), infrastructure projects funded solely with SLFRF are not subject to Build America, Buy America requirements. However, if SLFRF funds are used in conjunction with funds from other federal programs that are subject to Build America, Buy America, recipients must comply with the requirements.

12. Is NEPA review required?

Per P. 17 of [Final Rule FAQs](#), NEPA review is not required. Per [Final Rule](#) (Starting on P. 264), projects do need to comply with environmental and permitting laws and regulations—but NEPA does not apply.

13. What are the reporting deadlines?

For reporting to ORS, see the project timeline within the grant agreement. ORS requires this information to comply with the reporting requirements we must provide to the State. Included below are ORS' reporting requirements:

There are two reporting requirements for Agencies to provide to EBO:

1. **Quarterly Project and Expenditure Reporting:** Agencies will be required to report their quarterly reporting requirements back to the EBO per the following reporting schedule:

	Reporting Quarter	Reporting Period	Agency Reporting to EBO Due Date
CY 2022	QTR 3	July 1 – Sept 30	October 10, 2022
	QTR 4	Oct 1 – Dec 31	January 10, 2023
CY 2023	QTR 1	Jan 1 – Mar 31	April 10, 2023
	QTR 2	Apr 1 – Jun 30	July 10, 2023
	QTR 3	July 1 – Sept 30	October 10, 2023
	QTR 4	Oct 1 – Dec 31	January 10, 2024
CY 2024	QTR 1	Jan 1 – Mar 31	April 10, 2024
	QTR 2	Apr 1 – Jun 30	July 10, 2024
	QTR 3	July 1 – Sept 30	October 10, 2024
	QTR 4	Oct 1 – Dec 31	January 10, 2025
CY 2025	QTR 1	Jan 1 – Mar 31	April 10, 2025
	QTR 2	Apr 1 – Jun 30	July 10, 2025
	QTR 3	July 1 – Sept 30	October 10, 2025
	QTR 4	Oct 1 – Dec 31	January 10, 2026
CY 2026	QTR 1	Jan 1 – Mar 31	April 10, 2026
	QTR 2	Apr 1 – Jun 30	July 10, 2026
	QTR 3	July 1 – Sept 30	October 10, 2026
	QTR 4	Oct 1 – Dec 31	January 10, 2027
*Additional reporting beyond QTR 4 2026 is not required at this point			

- Annual Recovery Plan Performance Report:** EBO is required to submit an Annual Recovery Plan with information on the projects that the State is undertaking with program funding and how the State plans to ensure program outcomes are achieved in an effective, efficient, and equitable manner. The Annual Recovery Plan Performance Report also will include key performance indicators identified by the State. This report is due by July 31 on each calendar year through the length of the program. EBO / Guidehouse will reach out to the Agencies ahead of Annual Recovery Plan Performance report deadlines to initiate the data collection process during the late spring months of 2023 to prepare the July 2023 Annual report.