



The Essentials of SC ARPA Broadband Funding & Reporting

Contractor Webinar

December 8, 2022

Purpose of Today's Presentation

- Federal Regulations related to ARPA SLFRF
- Federal Reporting requirements for Contractors





Agenda

- 1 ARPA & SLFRF Overview**
- 2 Reporting Requirements**
- 3 Federal Contracting Rules**
- 4 Environmental & Permitting Laws and Regulations**
- 5 Debarment & Contractor in Good Standing Provisions**
- 6 Affordable Connectivity Program**
- 7 Bonding Requirements**

ARPA & SLFRF Overview

Which Laws apply?

Federal and State Laws

ARPA

American Rescue Plan Act. Signed into law on March 11, 2021, for the purpose of expediting the country's recovery from the economic and health effects of the COVID-19 pandemic.

SLFRF

Passed as part of ARPA, State and Local Fiscal Recovery Funds (SLFRF) provide state, local, and Tribal governments with funding to respond to the pandemic and its economic effects including necessary investments in broadband infrastructure to address challenges with access, affordability, and reliability.

ARPA Broadband Account

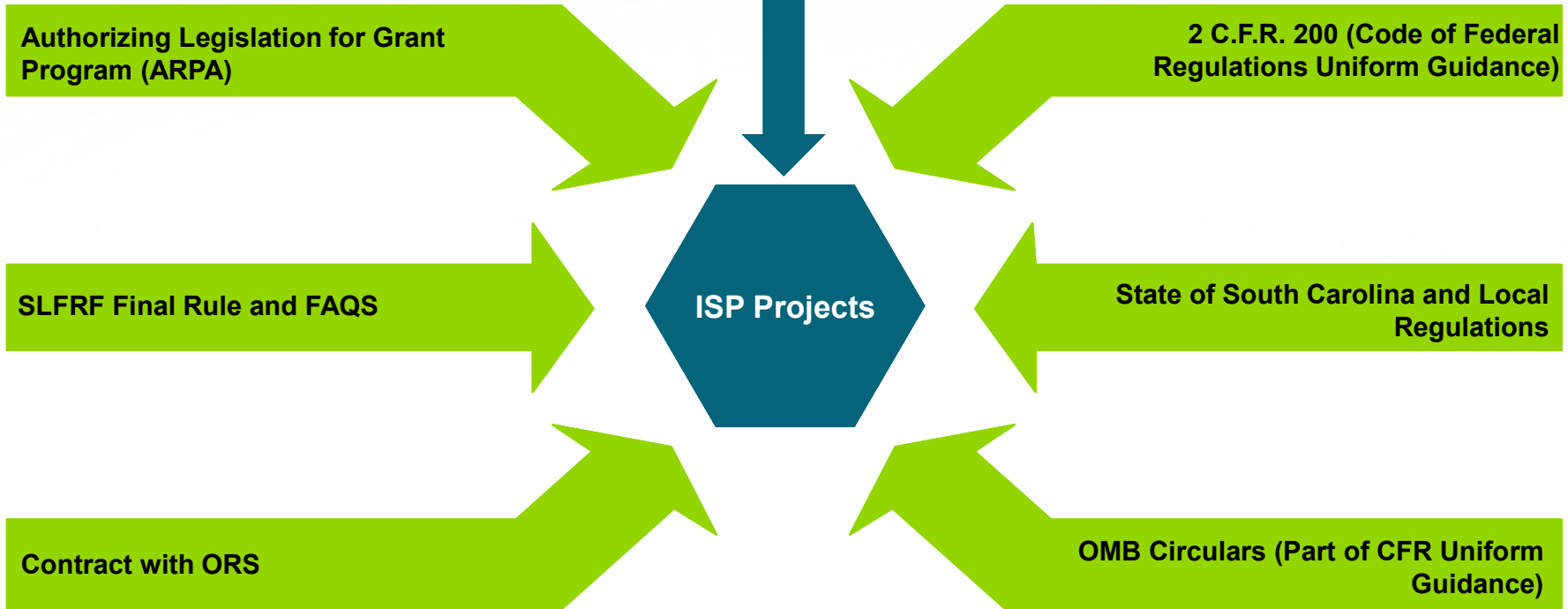
Established by the SC General Assembly House Bill 4408 for the administration of grant programs to expand broadband infrastructure to households, businesses, and communities in the State that are unserved or underserved by broadband services.

SC ARPA Broadband Grant Program

Established by ORS for the purpose of expanding broadband infrastructure in South Carolina.

Which regulations apply?

What federal regulations must ISPs follow?
Are there additional regulations?



How do ISPs know which requirements apply?

Use of SLFRF Funds require compliance with all governing Federal rules

ORS

- Determines eligible investments and awards projects to contractors
- Reviews projects for compliance and processes payments
- Submits required reporting (quarterly and annually)
- Monitors contractors for compliance

Contractors

- Adhere to federal / ORS contracting requirements
- Impose required conditions to subcontractors
- Submit required reporting
- Maintain documentation for retention period

What are the reporting requirements?

US Treasury requires ORS to report:

- **Quarterly**
 - Project Description, Timing, Location
 - For Broadband Projects
 - Additional Location, Technology Type, and Speed Test requirements
 - Status of Project completeness (Not started, in progress, completed)
 - All expenditures
- **Annually**
 - Use of Funds
 - Project Completeness reported as a Project Inventory
 - Narrative sections regarding project impacts
 - Community benefits, Justice40, Civil Rights compliance, Community Engagement, and Labor Practices

Because of these federal requirements, ISPs will also be required to provide detailed project information on a recurring basis.

Reporting Requirements for ISPs

Reporting

Contractors are responsible for meeting reporting requirements

- Reporting requirements are determined by US Treasury and conveyed to Contractors in executed contracts
- US Treasury reporting guidance can be found in the Project and Expenditure Report User Guide & the Compliance and Reporting Guidance documents
 - <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>
 - <https://home.treasury.gov/system/files/136/Oct-2022-PE-Report-User-Guide.pdf>
- Further requirements are determined by South Carolina and Office of Regulatory Staff
- Broadband projects have extensive reporting requirements, one example:

ORS will report pre-investment information, including:

1. Internet availability
2. Speed tests before investment
3. Locations for investments

ISP will provide investment information, including:

1. Speed Tests after investment
2. Speed tiers offered after deployment
3. Location by location reporting on technology and speeds

What are the specific Broadband reporting metrics?

Metrics	
Project status (started, greater/less than 50%)	
Projected/actual construction start date	
Projected/actual initiation of operations date	
Speed/pricing tiers offered (including low-cost option)	
Miles of fiber	
Cost per mile	
Cost per house	
Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.	If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not
	Confirm that the project is designed to, upon completion, meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed
Total miles of fiber deployed (Planned/Actual)	
Total number of funded locations served (Planned/Actual)	Total number of funded locations served, broken out by speeds:
	Total number of funded locations served, broken out by type (Planned/Actual)
Speed tiers offered, corresponding non-promotional prices, including associated fees, and data allowance for each speed tier of broadband service (required starting October 2022)	
Location information:	Latitude/longitude at the structure where service will be installed
	Technology used to offer service at the location
	Location type
	Speed tier at the location pre-SLFRF investment
	Speed and latency at the location post-SLFRF investment

How will ISPs report these metrics?

Executed contracts between ORS and ISPs will include the information and templates for collecting required reports from ISPs. Reports will include, but are not limited to:

- Project start-up reporting
 - Project description
 - Planned investment criteria
- Quarterly reporting (once construction starts):
 - Quarterly Financial and Construction Progress report
 - Labor and wage tracking
- Completion of project reporting:
 - Final expenditure information
 - Final labor and wage information
 - Actual investment criteria
- Ad hoc reporting, as needed

Federal Contracting Rules

Discussion of recurring questions of what does / does not apply?

Federal Contracting Rules: Davis-Bacon Act

Does Davis-Bacon Act apply to my Project?

- Davis-Bacon Act requirements (prevailing wage rates and reporting) **do not apply to projects** funded solely with funds from the SLFRF program.

Contracts \$10M and greater: Labor reporting

Do any Wage and Labor reporting requirements apply?

- Yes
- If total contract awarded to ISP is >\$10M, documentation of wages and labor is required.
 - These requirements can be met with certifications by the ISPs that the project is in compliance with the Davis-Bacon Act
 - Otherwise, ISPs provide project employment report.
- Wage and employee data must be collected and reported for contractor and all subcontractors

Contracts Less than \$10M: Labor reporting

Do any Wage and Labor reporting requirements apply?

- No
- For any contract in an amount less than \$10M, there are no wage nor labor reporting requirements

Project Example # 1

\$9.5M Total Project cost with a contract for \$7M in SLFRF funds

Wage and Labor Information is NOT required

Project Example #2

\$24M Total Project cost with a contract for \$9M in SLFRF funds

Wage and Labor Information is NOT required

Project Example #3

\$18M Total Project cost with a contract for \$11M in SLFRF funds

Provide a project employment 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

Whether those wages are at rates less than those prevailing.

Recipients must maintain sufficient records to substantiate. (Included as Exhibit N of signed contracts)

Certify Davis Bacon

For the \$11M SLFRF funded portion of Project:

1. WH-347 Form
2. Statement of Compliance
3. Submitted Weekly

OR

Federal Contracting Rules: BABA & NEPA

Is either provision triggered?

Build America, Buy America

ORS ISP Infrastructure contracts are funded solely with SLFRF and, therefore, are **not subject to BABA requirements.**

NEPA review is not required, but contractors must comply with all environmental and permitting laws and regulations.

National Environmental Policy Act

Federal Contracting Rules: Non-Discrimination

All Contractors are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. **Contractors must not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity).** Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

Title VI of the Civil Rights Act of 1964

(42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin

Fair Housing Act, Title VIII of the Civil Rights Act of 1964

(42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;

Section 504 of the Rehabilitation Act of 1973

as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

Age Discrimination Act of 1975

as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance;

Title II of the Americans with Disabilities Act of 1990

as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by ORS and local governments or instrumentalities or agencies thereto.

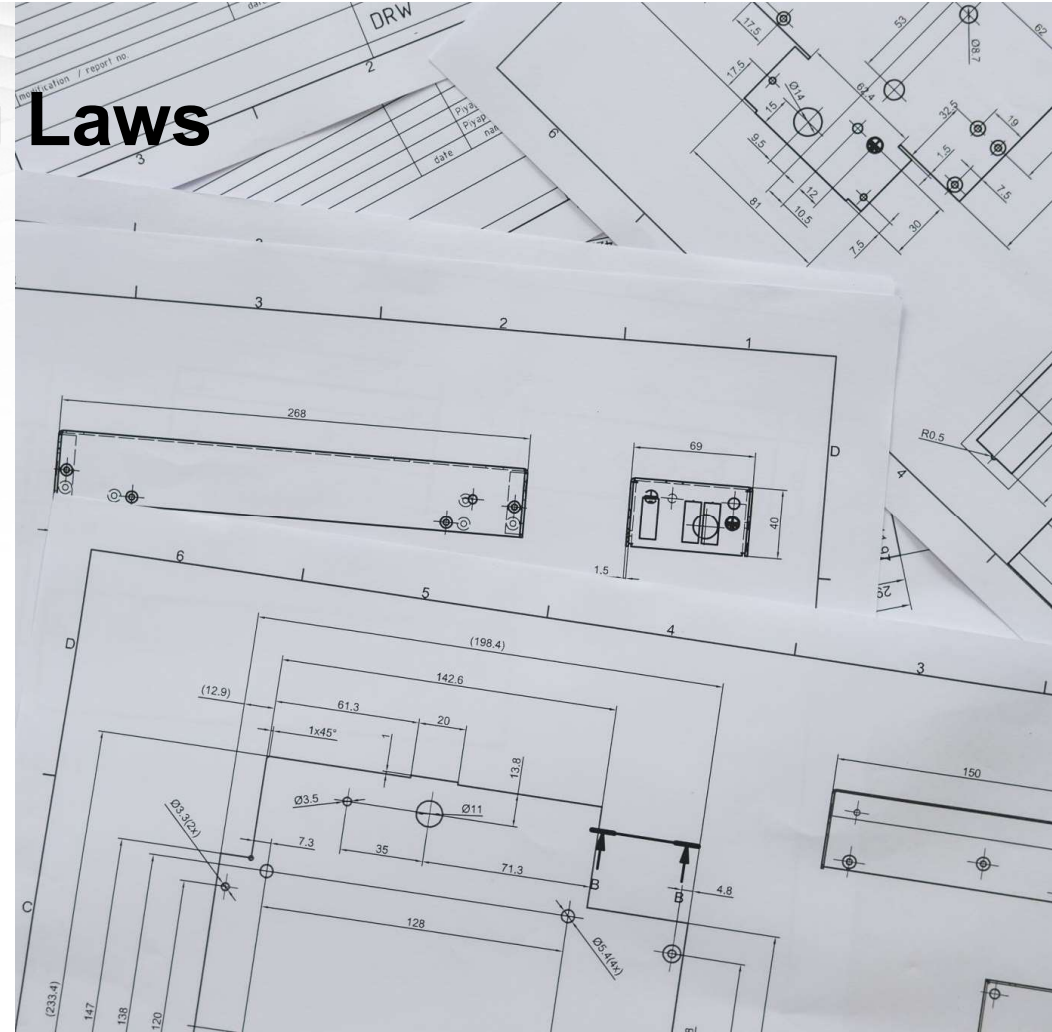
Environmental & Permitting Laws

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Comply with all Federal, State and Local Environmental laws



Obtain all required Federal, State and Local permits



Debarment & Contractor in Good Standing

Debarment & Contractor in good standing

These requirements flow down from ORS to ISPs to Subcontractors

ISP (Contractor)

- Required to obtain a **Unique Entity Identifier (UEI)** number through **SAM.gov registration**.
- Required to include a term or condition in all lower tier covered transactions that the award is subject to 2 CFR Part 180 and Treasury's implementing regulation at 31 CFR Part 19.
 - Guidelines to Contractors on government wide debarment and suspension.
- Only award subcontracts to entities that are in good standing and have not been debarred.

Sub- Contractor

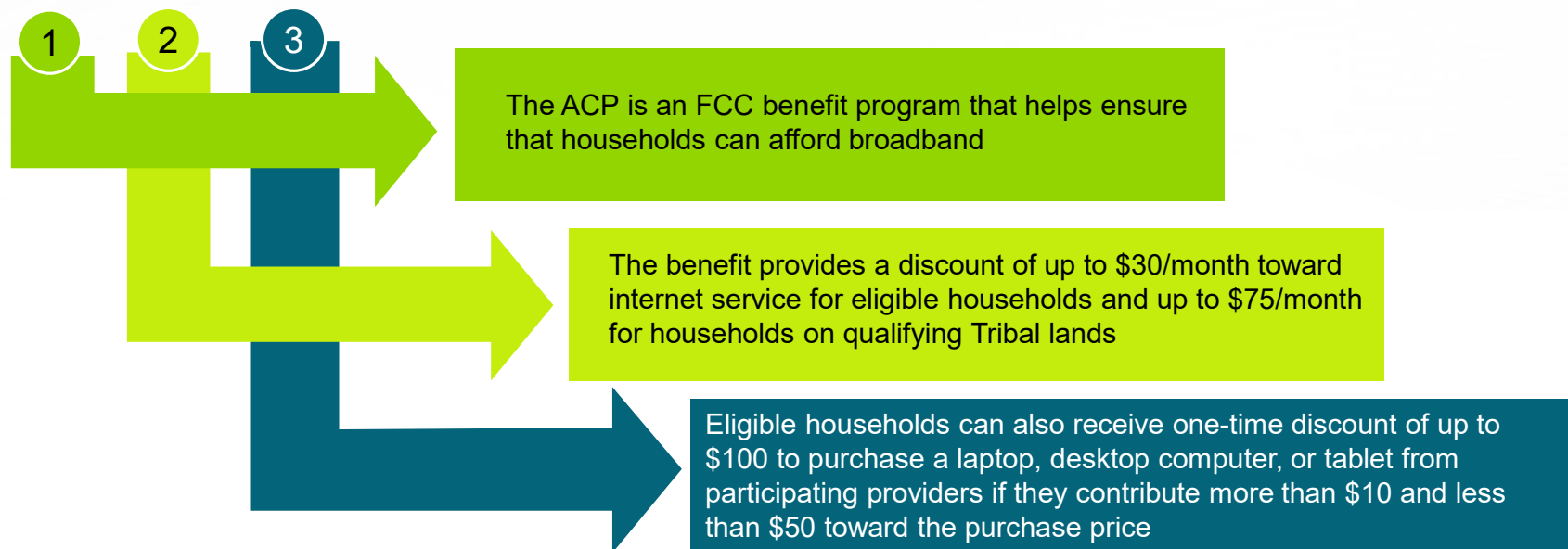
- Must be in and stay in good standing and have not been debarred.
- How do I know if my subcontractor is in good standing and has not been debarred?
- <https://www.dol.gov/agencies/ofccp/debarred-list>

Affordable Connectivity Program

Affordable Connectivity Program

Applicable to all projects that service households

The service provider for the project will either **be participants in the Federal Communications Commission (FCC) Affordable Connectivity Program (ACP)** or otherwise provide evidence that affordable access commensurate with those provided under the ACP to low-income consumers in the proposed service area.



Bonding Requirements

Bonding Requirements

ORS follows their standard bonding policy and requirements

ORS Bonding Policy

ORS will issue Notice to Proceed (NTP) contingent on the ISP acquiring a bond and submitting proof of bond to ORS.

Recap

Final Checklist

- ARPA & SLFRF Overview
- Reporting Requirements
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- Environmental & Permitting Laws and Regulations
- Debarment and Contractor in Good Standing Provisions
- Affordable Connectivity Program
- Bonding Requirements

Questions?

Your Guides

Carolyn Eagan

Project Manager

ceagan@guidehouse.com

Carter Ivey

Project Sr. Consultant

civey@guidehouse.com

Kajal Patel

Engagement Director

kpatel@guidehouse.com

Vinod Ramachandran

Engagement Director

vramachandran@guidehouse.com

