

STATE OF TENNESSEE
Local Fiscal Recovery Fund Technical
Assistance Program

Frequently Asked Questions (FAQs)

Updated: March 9, 2022

I. General Program Information

FAQ 1.1 What is the Tennessee Local Government Technical Assistance Program?

- Answer: The Tennessee Local Government Technical Assistance Program provides in-depth training as well as the framework for local governments to develop their own annual spend plans for American Rescue Plan Local Fiscal Recovery Funds and solicit additional guidance on those plans from the State of Tennessee.

FAQ 1.2 Are all local governments located in the State of Tennessee required to participate in the Tennessee Technical Assistance Program?

- Answer: No, participation in the Tennessee Local Government Technical Assistance Program is completely voluntary. The goal of this program is to provide guidance and feedback to local officials and governments by reviewing spend plans that detail the projects to be funded with the SLFRF allocations.

FAQ 1.3 What will local governments who elect to participate in the Technical Assistance Program be required to submit to the State of Tennessee?

- Answer: Recipients will be required to submit a spend plan within the State's online ARPA program management portal outlining all projects it intends to use its SLFRF dollars towards.

FAQ 1.4 Will there be a template spend plan provided to local governments?

- Answer: Yes, local governments may submit one spend plan per year in the State's online American Rescue Plan Act (ARPA) [program management portal](#). The [Spend Plan Template](#) with required information must be submitted along with all projects included in the spend plan. Each project must fall under only one expenditure category. Local governments may submit both planned projects and projects that are completed or under way for review. The State of Tennessee will review all spend plans submitted by local units of government in an effort to assist with the compliant use of ARPA allocation. Please note that review of revenue loss calculations is not included the State's local government technical assistance program and should not be submitted with the local governments spend plan.

FAQ 1.5 Is there a deadline by which participating local governments must submit their proposed spend plan?

- Answer: The State's online ARPA [program management portal](#) is open for spend plan submissions as of January 4, 2022, and the state will be reviewing submitted plans through April 2022. We ask that all spend plans are submitted by March 31, 2022.

FAQ 1.6 If the State of Tennessee finds that an expenditure proposed in a local government's spend plan appears to be eligible will the local government still be liable to pay back the funds if the federal government ultimately deems that expense to be ineligible?

- Answer: Yes, ultimately each local government is the direct recipient of the funds and responsible for any claw back decisions made by U.S. Treasury. The goal of the program, however, is to provide insight and guidance as to the eligibility of the proposed expense(s).

FAQ 1.7 May a local government use a portion of its allocation to meet non-federal match and cost-sharing requirements of other federal programs?

- Answer: Funds available under the revenue loss eligible use category generally may be used to meet the non-federal cost-share or matching requirements of other federal programs. However, SLFRF dollars may NOT be used as the non-federal share for purposes of a state's Medicaid and CHIP programs, even under the revenue loss category.

FAQ 1.8 What were the primary changes between the Interim Final Rule (IFR) and the Final Rule released January 2022?

- Answer: Treasury's Final Rule delivers broader flexibility and greater simplicity in the program, responsive to feedback in the comment process. Improvements include:
 - Broader set of uses that are available to respond to the pandemic's public health and economic impacts on households, small businesses, and others, including capital expenditures.
 - Major simplification for thousands of recipients through the \$10 million revenue loss standard allowance.
 - Greater flexibility in eligible broadband investments to address challenges with access, affordability, and reliability, as well as the addition of numerous eligible water and sewer infrastructure investments.
 - More streamlined options to provide premium pay through broadening the share of eligible workers who can receive premium pay without additional justification.
- An informational webinar for all Tennessee local governments discussing updates found in the Final Rule was held on January 12, 2022, a recording of which, and corresponding slides, may be found on the program [website](#).

FAQ 1.9 How can we add and/or remove users and request other portal related assistance?

- Answer: Please contact our help desk at tnarpa.support@home.com.

II. Eligible Uses: Public Health

FAQ 2.1 What are the eligibility requirements for demonstrating that an expense is eligible under the public health response expenditure category as allowed by U.S. Treasury?

- Answer: To be considered under the Public Health eligibility category expenses must support urgent COVID-19 response efforts to continue to decrease spread of the virus and bring the pandemic under control by funding COVID-19 mitigation and prevention efforts, medical expenses, behavioral healthcare, preventing and responding to violence, and certain public health and safety staff.

FAQ 2.2 What are examples of allowable public health expenses incurred to contain or mitigate the spread of the COVID-19 virus?

- Answer: The pandemic has broadly impacted Americans and recipients can provide services to prevent and mitigate COVID-19 to the general public or to small businesses, nonprofits, and impacted industries in general. Vaccination programs, medical expenses, testing, contact tracing, isolation or quarantine, PPE purchases, support for vulnerable populations to access medical or public health services, public health surveillance (e.g., monitoring for variants), enforcement of public health orders, public communication efforts, enhancement of healthcare capacity, including alternative care facilities, support for prevention, mitigation, or other services in congregate living facilities and schools, enhancement of public health data systems, capital investments in public facilities to meet pandemic operational needs, and ventilation improvements in key settings like healthcare facilities. For more examples of allowable costs please see the [Final Rule Overview](#).

FAQ 2.3 May a local government use its funds to purchase EMS equipment, vehicles or make improvements to emergency radio systems and/or equipment?

- Answer: Yes, emergency operations centers & emergency response equipment (e.g., emergency response radio systems) are an allowable public health cost as emergency medical services have seen a significant influx of patients. Please note, however, that you will be required to show that such capital expenditure is reasonably proportional to the negative impact resulting from or exacerbated by the COVID-19 pandemic.

FAQ 2.4 May funds be used to make purchase equipment and/or make repairs to existing equipment designed to improve overall air quality?

- Answer: Ventilation improvements are an allowable expense if it is an improvement to congregate settings for example: nursing homes, incarceration settings, homeless shelters, group living facilities, schools, skilled nursing facilities, residential behavioral health treatment, long-term care facilities, residential foster care facilities, and other group living facilities.

FAQ 2.5 May funds be used to pay for vaccine incentives programs?

- Answer: Yes. Recipients may use SLFRF to respond to the COVID-19 public health emergency, including expenses related to COVID-19 vaccination programs. See 31 CFR 35.6(b)(1)(i). Programs that provide incentives reasonably expected to increase the number of people who choose to get vaccinated, or that motivate people to get vaccinated sooner than they otherwise would have, are an allowable use of funds so long as such costs are reasonably proportional to the expected public health benefit.

FAQ 2.6 May funds be used to renovate existing buildings?

- Answer: Funds may be used for certain eligible capital investments. Depending on the type of building being renovated, public health funds may be used for improvements or construction of COVID-19 testing sites and laboratories, and acquisition of related equipment; Improvements or construction of COVID-19 vaccination sites; improvements or construction of medical facilities generally dedicated to COVID-19 treatment and mitigation (e.g., emergency rooms, intensive care units, telemedicine capabilities for COVID-19 related treatment); Expenses of establishing temporary medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs; Acquisition of equipment for COVID-19 prevention and treatment, including ventilators, ambulances, and other medical or emergency services equipment; Improvements to or construction of emergency operations centers and acquisition of emergency response equipment (e.g., emergency response radio systems); Installation and improvements of ventilation systems; Costs of establishing public health data systems, including technology infrastructure; Adaptations to congregate living facilities, including skilled nursing facilities, other long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities, as well as public facilities and schools (excluding construction of new facilities for the purpose of mitigating spread of COVID-19 in the facility); and Mitigation measures in small businesses, nonprofits, and impacted industries (e.g., developing outdoor spaces).

FAQ 2.7 May a local government use SLFRF dollars to purchase capital expenditures such as buildings?

- Answer: The Final Rule articulates that recipient may use SLFRF dollars for capital expenditures such as the purchase of buildings that respond to the public health and negative economic impacts of the COVID-19 pandemic. Any use of funds in this manner for a capital expenditure MUST comply with the capital expenditure requirements in addition to other standards for uses of these funds. Specifically, capital expenditures are subject to the same eligibility requirements and standards as other eligible uses to respond to the pandemic's public health and economic impacts. Additionally, capital expenditures must be related and reasonably proportional to the impact identified and reasonably designed to benefit the impacted population or class.

FAQ 2.8 If a proposed expense was allowable under the Coronavirus Relief Fund (CRF) to respond to the public health emergency, is it likewise eligible under the Coronavirus State and Local Fiscal Recovery Fund (CSLFRF)?

- Answer: Generally, funding uses eligible under CRF as a response to the direct public health impacts of COVID-19 will continue to be eligible under CSFRF/CLFRF, with the following two exceptions: (1) the standard for eligibility of public health and safety payrolls has been updated; and (2) expenses related to the issuance of tax-anticipation notes are not an eligible funding use.

FAQ 2.9 Can SLFRF dollars be used for costs incurred by prisons and jails?

- Answer: Yes, so long as such uses are in alignment with Treasury guidance as stated in the Final Rule. Examples of eligible uses of funds for jails and prisons would include:
 - Programs to expand access to evidence-based treatment like medications to treat opioid use disorder (e.g., direct costs or incentives for prisons and jails to offer medications and low-barrier treatment)
 - Support for prevention, mitigation, or other services in congregate living facilities e.g., nursing homes, incarceration settings, homeless shelters, group living facilities
 - Installation and improvements of ventilation systems
 - Adaptations to congregate living facilities, including incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities, as well as public facilities and schools

An example of an INELIGIBLE cost would include construction of new facilities for the purpose of mitigating spread of COVID-19 in the facility.

III. Eligible Uses: Economic Impact

FAQ 3.1 What are the eligibility requirements for demonstrating that an expense is eligible under the economic impact expenditure category as allowed by U.S. Treasury?

- Answer: Funds eligible under the Economic Impact expenditure category must respond to economic harms to workers, families, small businesses, impacted industries, and the public sector in addition to enabling governments to rehire public sector staff and rebuild capacity. Eligible uses in this category include assistance to households; small businesses and non-profits; and aid to impacted industries.

FAQ 3.2 Is direct cash assistance to individuals allowed using these funds?

- Answer: Yes, provided the recipient considers whether, and the extent to which, the household has experienced a negative economic impact from the pandemic. Additionally, cash transfers must be reasonably proportional to the negative economic impact they are intended to address. Cash transfers grossly in excess of the amount needed to address the negative economic impact identified by the recipient would not be considered to be a response to the COVID-19 public health emergency or its negative impacts. In particular, when considering appropriate size of

permissible cash transfers made in response to the COVID-19 public health emergency, state, local, territorial, and Tribal governments may consider and take guidance from the per person amounts previously provided by the federal government in response to the COVID crisis.

FAQ 3.3 How can recipients use funds to assist the travel, tourism, and hospitality industries?

- Answer: The recovery of the tourism, travel, hospitality and similarly impacted sectors within a local area are eligible for support. Aid provided to tourism, travel, and hospitality industries should respond to the negative economic impacts of the pandemic. For example, a recipient may provide aid to support safe reopening of businesses in the tourism, travel and hospitality industries and to districts that were closed during the COVID-19 public health emergency, as well as aid a planned expansion or upgrade of tourism, travel and hospitality facilities delayed due to the pandemic. Tribal development districts are considered the commercial centers for tribal hospitality, gaming, tourism and entertainment industries.

FAQ 3.4 How can we determine which industries can be considered “other impacted industries” similar to the tourism/hospitality industry?

- Answer: When considering providing aid to industries other than tourism, travel, and hospitality, recipients should consider the extent of the economic impact as compared to tourism, travel, and hospitality, the industries enumerated in the statute. Impacted industries other than tourism, travel, or hospitality sectors can be considered impacted if:

1. The industry experienced 8% employment loss from pre-pandemic level or;
2. The economic impact is comparable or worse as the national tourism, travel, and hospitality industries as of the date of the final rule and the impact was due to the pandemic. The leisure and hospitality industry has experienced an approximately 24 percent decline in revenue and approximately 17 percent decline in employment nationwide due to the COVID-19 public health emergency.

Recipients should also consider whether impacts were due to the COVID-19 pandemic, as opposed to longer-term economic or industrial trends unrelated to the pandemic.

FAQ 3.5 May recipients use funds for general economic development or workforce development?

- Answer: Generally, not. Recipients must demonstrate that funding uses directly address a negative economic impact of the COVID-19 public health emergency, including funds used for economic or workforce development. For example, job training for unemployed workers may be used to address negative economic impacts of the public health emergency and be eligible.

FAQ 3.6 How do we know what is a Qualified Census Tract in our community?

- Answer: Low-Income Housing Tax Credit Qualified Census Tracts must have 50 percent of households with incomes below 60 percent of the Area Median Gross Income (AMGI) or have a poverty rate of 25 percent or more. More QCT information can be found at the [Office of Policy Development and Research website](#).

FAQ 3.7 Are recipients required to demonstrate that each individual or business experienced a negative economic impact for that individual or business to receive assistance?

- Answer: Not necessarily. The Final Rule allows recipients to demonstrate a negative economic impact on a population or group and to provide assistance to households or businesses that fall within that population or group. In such cases, the recipient need only demonstrate that the household or business is within the population or group that experienced a negative economic impact. For example, an internet access assistance program for all low- or moderate-income households would not require the recipient to demonstrate or document that each individual low- or -moderate income household experienced a negative economic impact from the COVID-19 public health emergency apart from being low- or -moderate income.

FAQ 3.8 Would sub-recipient monitoring require a local government to receive all receipts/invoices of the business/non-profit spending with funds given or would the county just need the invoices/receipts of the transfer of funds from local government to business/non-profit?

- Answer: SLFRF recipients that are pass-through entities as described under 2 CFR 200.1 are required to manage and monitor their subrecipients to ensure compliance with requirements of the SLFRF award. Detailed requirements can be found for subrecipient monitoring compliance and reporting can be found in [the SLFRF Compliance and Reporting Guidance](#) on page 9.

FAQ 3.9 What is the difference between economic impact and disproportionately impacted communities?

- Answer: The pandemic caused disproportionate impacts, or more severe impacts, in certain communities. For example, low-income and underserved communities have faced more severe health and economic outcomes like higher rates of COVID-19 mortality and unemployment, often because preexisting disparities exacerbated the impact of the pandemic. The Final Rule describes these as “disproportionately impacted” households, communities, small businesses, and nonprofits. The Final Rule provides an expanded set of households and communities that are presumed to be “impacted” and “disproportionately impacted” by the pandemic, thereby allowing recipients to provide responses to a broad set of households and entities without requiring additional analysis. Eligible expenses include making affordable housing, childcare, early learning, and services to address learning loss during the pandemic eligible in all impacted communities and making certain community development and neighborhood revitalization activities eligible for disproportionately impacted communities. More details can be found on page 19 of the [Final Rule Overview](#).

FAQ 3.10 If money is awarded to a non-profit organization, could it be used for marketing?

- Answer: Yes, eligible uses to address negative economic impacts include work “to improve efficacy of programs addressing negative economic impacts, including through use of data analysis, targeted consumer outreach, improvements to data or technology infrastructure, and impact evaluations.” In addition, recipients may use funds to facilitate access to health and social services in populations and communities disproportionately impacted by the COVID-19 pandemic, including benefits navigators or marketing efforts to increase consumer uptake of

federal tax credits, benefits, or assistance programs that respond to negative economic impacts of the pandemic. See 31 CFR 35.6(b).

IV. Eligible Uses: Revenue Loss

FAQ 4.1 Is there a standard allowance of revenue loss allowed under Treasury's Final Rule?

- Answer: Yes. The Final Rule provides that any government can elect to take a "standard allowance" for revenue loss of up to \$10 million, allowing governments to select between the standard allowance or complete the full revenue loss calculation contained in the guidance. The significance of this change is that the revenue loss category can be used to fund any "government services." This is much less restrictive than some of the other allowable categories.

FAQ 4.2 If a local government elects to utilize the standard allowance in lost revenue, and its original allocation was less than the standard allowance of \$10 million, does this election increase the local government's allocation?

- Answer: No. The standard allowance is for the life of the program for an amount up to \$10 million. It does not, in any way, increase the original allocation to a local government under the SLFRF.

FAQ 4.3 Are there any limitations on how local governments are able to spend the standard revenue loss allowance of up to \$10 million?

- Yes. Funds may not be used to make contributions to a pension fund; to make payments for debt service; or contributions to rainy day funds and similar financial reserves which constitute savings for future spending needs. Additionally, all funds expended under the revenue loss category must be spent on government services.

V. Eligible Uses: Premium Pay

FAQ 5.1 Who qualifies for premium pay? Also, would it be given as a lump sum amount like a bonus or added to weekly checks?

- Answer: Recipients may use this funding to provide premium pay directly, or through grants to private employers, to a broad range of essential workers who must be physically present at their jobs including, among others: (1) Staff at nursing homes, hospitals, and home-care settings, (2) workers at farms, food production facilities, grocery stores, and restaurants, (3) janitors and sanitation workers, (4) public health and safety staff, (5) truck drivers, transit staff, and warehouse workers, (6) childcare workers, educators, and school staff, (7) social service and human services staff. Treasury's Interim Final Rule emphasizes the need for recipients to prioritize premium pay for lower income workers. In regard to payout, recipients have discretion with respect to the way in which premium pay is awarded to eligible workers (e.g., monthly,

quarterly, lump sum), provided that the total premium pay awarded to any eligible worker does not exceed \$13 per hour or \$25,000 over the period of performance.

FAQ 5.2 If an employee is included in the list of eligible workers provided in the final rule, is that employee automatically eligible to receive premium pay?

• Answer: No, eligible workers must also perform “essential work,” which is not performed while working remotely from a residence, and involves either regular, in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or regular physical handling of items that were handled by, or are to be handled by, patients, the public, or coworkers of the individual that is performing the work. Premium pay must also “respond to” the eligible worker performing essential work.

FAQ 5.3 How is premium pay calculated?

• Answer: The ARPA defines premium pay to mean an amount up to \$13 per hour in addition to wages or remuneration the worker otherwise receives and in an aggregate amount not to exceed \$25,000 per eligible worker over the period of performance. Premium pay that would increase a worker’s total pay above 150% of the greater of the state or county average annual wage requires specific justification for how it responds to the needs of these workers.

FAQ 5.4 Can funds be used to back pay essential workers?

• Answer: Employers are both permitted and encouraged to use Coronavirus State and Local Fiscal Recovery Funds to offer retrospective premium pay, recognizing that many essential workers have not yet received additional compensation for work performed.

FAQ 5.5 Is premium pay issued by the county, city, employer, or directly to eligible workers?

• Answer: Fiscal Recovery Funds payments may be used by recipients (State, Local, and Tribal governments) to provide premium pay to eligible workers performing essential work during the COVID-19 public health emergency for its own employees or to provide grants to third-party employers with eligible workers performing essential work. It is up to recipients to determine how they allocate ARPA funds, meaning premium pay may or may not be a part of recipients planned uses.

VI. Eligible Uses: Administrative Expenses

FAQ 6.1 Can funds be used to hire staff to manage the grant and determine effectiveness?

• Answer: Recipients may use funds to cover the portion of payroll and benefits of employees corresponding to time spent on administrative work which includes, but is not limited to, costs related to disbursing payments of Fiscal Recovery Funds and managing new grant programs established using Fiscal Recovery Funds.

FAQ 6.2 What costs are eligible under the administrative expenses expenditure category?

- Answer: The Coronavirus State and Local Fiscal Recovery Funds final rule details a number of administrative processes and requirements, including on distribution of funds, timeline for use of funds, transfer of funds, treatment of loans, use of funds to meet non-federal match or cost-share requirements, administrative expenses, reporting on use of funds, and remediation and recoupment of funds used for ineligible purposes. Payroll and benefits for employees corresponding to time spent on administrative work which includes costs related to disbursing payments of Fiscal Recovery Funds and managing new grant programs, evaluation and data analysis, and transfers to other units of government. SLFRF funds may be used for direct and indirect administrative expenses involved in administering the program.

VII. Eligible Uses: Infrastructure (Water/Sewer)

FAQ 7.1 May a local government use a portion of its allocation towards eligible projects under Tennessee’s Department of Environment and Conservation (TDEC) water, wastewater, and stormwater infrastructure program?

- Answer: Yes. Local governments are encouraged to use SLFRF dollars towards their portion of the local co-funding component of TDEC’s program.

FAQ 7.2 Where can a local government find more information about The Tennessee Department of Environment and Conservation (TDEC) water, wastewater, and stormwater infrastructure program?

- Answer: TDEC is charged with administering the water, wastewater, and stormwater infrastructure component of the State of Tennessee’s allocation of American Rescue Plan (ARP) Act funds. Tennessee’s [Financial Stimulus Accountability Group](#) dedicated \$1.35 billion of Tennessee’s Fiscal Recovery Funds from ARP for this purpose. Of the \$1.35 billion, approximately \$1 billion will be awarded in the form of non-competitive grants to communities for eligible infrastructure projects as part of the Tennessee Water Infrastructure Investment Program. More information may be found at: <https://www.tn.gov/environment/arp.html>.

VIII. Eligible Uses: Infrastructure (Broadband)

FAQ 8.1 Where can a local government find more information about ECD’s broadband program available to local governments?

- Answer: The Tennessee Emergency Broadband Fund – American Rescue Plan (TEBF-ARP) utilizes a portion of the State of Tennessee’s American Rescue Plan Coronavirus State and Local Fiscal Recovery Funds (FRF) to make necessary investments in water, sewer, and broadband infrastructure in order to ultimately help turn the tide on the pandemic, address its economic fallout, and lay the foundation for a strong and equitable recovery. More information on

this program may be found at <https://www.tn.gov/ecd/rural-development/tennessee-broadband-grant-initiative/tennessee-emergency-broadband-fund.html>.

XI. Procurement

As a general matter, all expenses covered by SLFRF funding must be for eligible uses under the Final Rule. In addition to the Final Rule requirements, the acquisition of any goods or services must fully comply with the federal procurement requirements at [2 C.F.R. §§ 317-327](#).

The specific federal requirements vary depending on whether an entity is considered a “[state](#)” under the uniform guidance. For the purposes of this FAQ, all entities conducting a procurement are considered to be local governments and will be described as “non-state entities.”

Federal procurement requirements take precedence over state and local standards. In a circumstance where there is a difference between state, local, and federal standards, a non-state entity must follow the most restrictive of rule(s) that allow compliance with all applicable levels of governance. For instance, while some state laws may allow for geographic preferences in the evaluation of bids or proposals, they are prohibited under federal requirements. Conversely, in instances where state or local law is more restrictive – such as a lower dollar threshold for formal procurement procedures – a non-state entity must comply with the more restrictive requirement.

FAQ 9.1 Do any federal procurement requirements apply if a non-state entity is sole-sourcing a contract under exigent or emergency circumstances?

• Answer: Yes, non-state entities must comply with the following requirements even when exigent or emergency circumstances exist:

- A. Contracts must include the required contract clauses (2 C.F.R. § 200.327 & Appendix II) (also applicable to states).
- B. Contracts exceeding the Federal simplified acquisition threshold must include the Federal bonding requirements if the contract is for construction or facility improvement (2 C.F.R. § 200.326).
- C. Contracts must be awarded to a responsible contractor (2 C.F.R. § 200.318(h)).
- D. All costs must be reasonable. In cases where the contract exceeds or is expected to exceed the Federal simplified acquisition threshold, the non-state entity must complete a cost analysis (2 C.F.R. § 200.324(a) and (b)).
- E. The use of cost-plus-percentage-of-cost and percentage-of-construction-cost methods of contracting is prohibited (2 C.F.R. § 200.324(d)).
- F. Use of time and materials contracts must comply with 2 C.F.R. § 200.318(j).
- G. The non-state entity must follow the documentation, oversight, and conflict of interest requirements, among other general procurement requirements, in 2 C.F.R. § 200.318. If a conflict of interest is unavoidable due to the exigent/emergency circumstances, the non-state entity must explain that in the procurement documentation.

FAQ 9.2. What if the non-state entity wants to use a pre-awarded or pre-existing contract in exigency or emergency and that contract does not comply with the federal procurement requirements?

• Answer: Contracts procured prior to the COVID-19 public health emergency are at higher risk of scrutiny because they restrict full and open competition. Their use may be permissible in the following circumstances:

- The contract was originally procured in full compliance with federal procurement standards.
- The work to be performed falls within the scope of work of the original contract and there are no material changes to the scope.
- The scope of the contract as initially procured does not exceed the amount of property and services required to meet the non-state entity’s original, reasonably expected needs.

If a pre-awarded or pre-existing contract is not in compliance with the Federal procurement requirements, it may still be possible to amend the contract or justify its use for the duration of the exigency or emergency in limited circumstances. Entities should consult with their local purchasing director and/or legal counsel for guidance.

FAQ 9.3 What if a contract was signed and legally binding before the effective date for the new requirements, are they subject to the Uniform Guidance Procurement Standards requirements for that particular contract?

• Answer: Yes, contracts issued on or after July 1, 2018, are subject to Uniform Guidance procurement requirements, regardless of the date issued. All contracts and purchase orders that receive federal funding must be procured in full compliance with federal regulations. Contracts procured prior to the COVID-19 public health emergency should be carefully reviewed for compliance with federal requirements, including required contract provisions, full and open competition, and reasonableness of costs.

FAQ 9.4 What is considered a “transaction” when considering aggregate cost and micro-purchase methods under the Uniform Guidance(UG)?

• Answer: A transaction is an occurrence in which two or more entities exchange goods, services, or money between or among them under an agreement formed for their mutual benefit. The following examples illustrate transactions in the context of micro-purchasing:

(1) A program operator purchases computer paper, ink cartridges, paper towels, and cleaning fluids from the same supplier at the same time. That would be a single transaction. If the aggregate cost of these items (that is, the total bill) does not exceed the micro-purchase threshold, the transaction is a micro-purchase under 2 CFR §200.320(a).

(2) A program operator makes the following purchases on the same day at two separate locations: computer paper and ink cartridges at a retail office supply store, and paper towels and cleaning fluids at a different retail store. The dollar amount spent at each supplier is less than the micro-purchase threshold. Each purchase is a separate transaction made from different

suppliers. Neither supplier is involved in the transaction with the other. Therefore, these transactions are micro-purchases, and the program operator has distributed purchases among qualified suppliers.

FAQ 9.5 What requirements exist regarding competitive bidding and contractors that developed components of the capital grant application?

• Answer: All procurement transactions must be conducted in a manner providing full and open competition. As required by 2 C.F.R. § 200.319(b), 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.

FAQ 9.6 If a local government has an engineering or other professional services firm on retainer, do they have to go through a competitive procurement process?

• Answer: Yes. All procurement transactions must be conducted in a manner providing full and open competition. The use of noncompetitive contracts to consultants on retainer contracts restricts competition and is specifically prohibited at 2 C.F.R. § 200.319(b)(4). The contracting entity must, by public advertisement, assure that all interested vendors are given a fair opportunity to compete for the award of the contract. The advertisement must include the criteria that will be used to rate the firms for their competency and qualifications to perform the type of work requested. The advertisement should have a clear and precise statement of the work to be done and allow enough time for firms to submit a proposal.

FAQ 9.7 Will Development Districts be (or the perception of being) exempt from the procurement process because they are a quasi-governmental entity?

• Answer: There are no exemptions under the federal procurement regulations. Under federal awards, all procurement transactions must be conducted in a manner providing full and open competition, even in instances where state law provides exemptions.

FAQ 9.8 Are noncompetitive procurements ever allowed under federal requirements?

• Answer: Noncompetitive procurement can only be allowed if one or more of the following circumstances apply:

- (1) The aggregate dollar amount of acquisition of property or services acquired does not exceed the micro-purchase threshold of \$10,000;
- (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; or
- (5) After solicitation of a number of sources, competition is determined inadequate.

All noncompetitive procurements will be subject to additional scrutiny in the event of audit. A non-state entity should prepare a detailed justification for each instance of noncompetitive procurement. The justification should include the following elements:

- (1) Identify which of the circumstances justify a noncompetitive procurement.
- (2) Provide a brief description of the product or service being procured, including the expected dollar amount of the procurement.
- (3) Explain why a noncompetitive procurement is necessary. If the noncompetitive procurement is based on exigent or emergency circumstances, then the justification should explain the nature of the public exigency or emergency. This would include specific conditions and circumstances that clearly illustrate why procurement other than through noncompetitive proposals would cause unacceptable delay in addressing the public exigency or emergency. Failure to plan for transition to competitive procurement cannot be the basis for continued use of noncompetitive procurement based on public exigency or emergency.
- (4) State how long the noncompetitively procured contract will be used for the define scope of work, and the impact on that scope of work should the noncompetitively procured contract not be available for that amount of time. Examples to ask are, how long do you anticipate the exigency or emergency circumstances will continue; how long will it take to identify your requirements and award a contract that complies with all procurement requirements; or how long would it take another contractor to reach the same level of competence.
- (5) Describe the specific steps taken to determine that full and open competition could not have been met, or was not used, for the scope of work (e.g., research conducted to determine that the good or service required is only available from one source).
- (6) Describe any known conflicts of interest and any efforts that were made to identify possible conflicts of interest before the noncompetitive procurement occurred. If no efforts were made, explain why.
- (7) Include any other information justifying the use of noncompetitive procurement in the specific instance.

Coronavirus State and Local Fiscal Recovery Fund Links

[Final Rule](#)

[Final Rule Overview](#)

[FAQ 2022](#)

[TN Department of Finance and Administration Spend Plan Development](#)

[State of Tennessee Local Government Technical Assistance Program and Spend Plan Template](#)

[Recipient Compliance and Reporting Responsibilities](#)

[Compliance and Reporting Guidance](#)

[Fact Sheet](#)

[Quick Reference Guide](#)

[Compliance Statement](#)

[Early Reporting Highlights](#)

[Tool for Determining Low and Moderate Income \(LMI\) Households](#)