

STATE BUILDINGS PROGRAM POLICIES AND PROCEDURES

REVENUE LOSS RESTORATION CASH FUND (RLRC) INTERIM POLICY

I. BACKGROUND

HB22-1411 created the Revenue Loss Restoration Cash Fund (RLRC) § 24-75-227 (2)(a), C.R.S. referenced in the footnotes in the Long Bill (HB22-1329). This fund has been used to fund most of the construction projects approved in the Long Bill. The RLRC fund is created using the broader State and Local Fiscal Recovery Funds (SLFRF) Revenue Replacement funds from the Federal government.

Projects listed under the RLRC are considered Capital Expenditures or CapEx as defined by 2 CFR 200 and are considered federal Expenditure Category EC 6.1.

- **On September 27, 2022 The Office of the State Controller has granted a waiver to the six-month encumbrance deadline as defined in § 24-30-1404 (7)(a) C.R.S. The new encumbrance deadline is April 25, 2023.**
- The deadline to encumber all funds for the SLFRF-funded portion of an RLRC project is December 31, 2024 (mid-FY25).
- Funds must be fully spent by December 31, 2026 (mid-FY27).

Statutory Authority

Colorado Revised Statutes (C.R.S.):

24-75-226 *“American Rescue Plan Act of 2021” cash fund creation-recipient funds-limitations-reporting-legislative declaration-definitions-repeal*

24-75-227 *Revenue loss restoration cash fund*

24-75-228 *Economic recovery and relief cash fund*

Definitions

Note: Additional federal definitions can be found in the *OSA Supplementary General Conditions: Federal Provisions (SC-SGC)*.

“Authorized Representative” is an individual with legal authority to bind the government entity (e.g., the Chief Executive Officer of the government entity).

“Capital Expenditure” are expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.

“Contractor” means a non-Federal Entity (or a Federal agency under an Agreement to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Contractor is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Contractor” includes and may be referred to as “Subcontractor”. The term does not include an individual who is a beneficiary of a federal

program.

“Coronavirus State Fiscal Recovery Fund” (SLFRF) means the federal fund created in 42 U.S.C. Sec.802, or any successor fund. The fund also includes the amount transferred to the fund in accordance with § 27-75-228

“Federal Davis Bacon” The Davis–Bacon Act of 1931 is a United States federal law that establishes the requirement for paying the local prevailing wages on public works projects for laborers and mechanics

“Prime Recipient” means the State of Colorado and by extension a Colorado state agency or institution of higher education that receives an Award.

“Subrecipient” means an award by a Colorado state agency or institution of higher education to a contractor

“Public Project” has the same meaning as defined in section 24-92-102 (8), C.R.S..

II. Federal Provisions / Federal Register (CFR)

2 CFR 200 Appendix II - All contracts (including contracts between the primary vendor and their subconsultants/subcontractors) must include required federal contract provision language. OSA has incorporated these as the *Supplementary General Conditions- Federal Provisions (SC-SGC)*.

Comments below are specific to Expenditure Category EC 6.1 and are in reference to the *Supplementary General Conditions: Federal Provisions* and the *Coronavirus State and Local Fiscal Recovery Funds Final Rule: Frequently Asked Questions*.

Section 6 Reporting / Section 10 Access to Records / Section 11 Single Audit Requirements

- The SLFRF Terms and Conditions Section 3 - Reporting addresses compliance with Treasury reporting requirements.
- The contractor agrees to comply with any reporting obligations established by the Treasury as they relate to this award. The contractor also agrees to comply with any reporting requirements established by the Governor’s Office and Office of the State Controller. The State will provide notice of such additional reporting requirements in writing should the reporting requirement change.
- Each contractor will need to report in SAM.gov per Article 5, Total Compensation.

Section 9.2 Procurement of Recovered Materials

2 CFR 200.323 Procurement of recovered materials and procuring solid waste management services that maximize energy and resource recovery (i.e. recycling)

- Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only 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, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; 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.

Section 9.3 Domestic Preference for Procurements

2 CFR 200.322 domestic preference requirements Buy America

- Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all Agreements and purchase orders for work or products under this award.
- Per the Department of Treasury FAQ, Awards made under the SLFRF program are not subject to the Buy America Preference requirements set forth in section 70914 of the Build America, Buy America Act included in the Infrastructure Investment and Jobs Act, Pub. L. 117-58.

Section 12.1.1 Equal Employment Opportunity

- **The requisite clauses are included in this section**

Section 12.1.2 Davis Bacon Act

- While this provision states any project in excess of \$2,000 must comply with the Davis Bacon Act, the grant guidance is less restrictive.
- This fund is considered to be Federally funded, and therefore, exempts all of the funded projects from State Prevailing Wage and Apprenticeship requirements. There is a requirement for reporting prevailing wage for projects that are \$10 Million or more.
- In order to ensure uniformity between projects, and in consultation with the Governor's office, specific to the RLRC grant funds within Expenditure Category EC6.1, Davis Bacon Wages are required for construction projects over \$10 million.

Section 12.1.4 Clean Air Act

42 U.S.C. 7401-7671q Clean Air Act

- Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act

Section 12.1.4 Federal Water Pollution Control Act

33 U.S.C. 1251-1387 Federal Water Pollution Control Act

- Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act

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Section 12.1.5 Debarment and Suspension

2 CFR 180.300 Prime contractors are barred under FAR 52.209-6(b) from entering into subcontracts over \$35,000 with a Federally debarred/excluded entity (Sam.gov). Federal grantees also cannot enter into subcontracts with excluded entities.

- Debarment and Suspension (Executive Orders 12549 and 12689). An Agreement award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in SAM, in accordance

with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

12.1.7 Prohibition on certain telecommunications and video surveillance

2 CFR 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

- Recipients and subrecipients are prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided 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.

12.1.8 Never Contract with the Enemy

2 CFR 200.215 Never contract with the enemy

- Federal awarding agencies and recipients are subject to the regulations implementing Never Contract with the Enemy in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered contracts, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.
- Because all SLFRF projects are taking place on State property, this provision is not applicable.

12.1.9 Civil Rights Act Title VI

31 CFR Part 22

- Prohibits recipients of federal financial assistance from excluding from a program or activity, denying

benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.)

12.1.10 Contract Work Hours

40 U.S.C. 3702 Contract Work Hours and Safety Standards Act 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.

15 Event of Default and Termination

2 CFR 200.340 Contract Termination

- Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of Colorado may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.
 - Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:
 - By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;
 - By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
 - By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
 - By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or by the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

12.1.13 Real Property Disposition

2 CFR 200.311 Real Property/Equipment Disposition

- Real Property Disposition (2 CFR 200.311) When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or pass-through entity.

Other Common Federal Provisions:

National Environmental Policy Act (NEPA)

- Per the Department of Treasury FAQ, NEPA does not apply to Treasury's administration of the funds, including funds expended under the revenue loss, public health and negative economic impacts, and

water, sewer, and broadband infrastructure eligible use categories. Projects supported with payments from the funds may still be subject to NEPA review if they are also funded by other federal financial assistance programs or have certain federal licensing or registration requirements.

National Historic Preservation Act (NHPA)

- Per the Department of Treasury FAQ, Section 106 of the NHPA does not apply to Treasury’s administration of SLFRF funds, including funds expended under the revenue loss, public health and negative economic impacts, and water, sewer, and broadband infrastructure eligible use categories. Projects supported with payments from the funds may still be subject to Section 106 of the NHPA if they involve participation from other federal agencies, including funding from other federal financial assistance programs, or are subject to receipt of approvals from other federal agencies.

III. CAPITAL CONSTRUCTION REQUIREMENTS FOR AGENCIES AND INSTITUTIONS

A. Opening Project

- SC4.1 Project Application: In the Source of Funds, check the Cash Funds box and note HB22-1329, SLFRF or Long Bill:

I. SOURCE OF FUNDS (Bill Number(s) and Date(s) per Funding Phase)	
<input type="checkbox"/> Capital Construction Funds Exempt	
<input checked="" type="checkbox"/> Cash Funds	HB22-1329
<input type="checkbox"/> Reappropriated Funds	
<input type="checkbox"/> Federal Funds	
<input type="checkbox"/> Emergency Funds	
<input type="checkbox"/> Other (Explain)	
TOTAL	

- If the SLFRF funded project received the same Project ID, The earlier phased appropriation(s) is extended three fiscal years as described in Fiscal Rule 4-3, Capital Construction Carryforwards and Reversions.
- If both Cash and SLFRF funded, only the SLFRF portion of the project is required to meet Federal Provisions and SLFRF Federal Funds Contractor Terms and Conditions, though it may be difficult to contractually determine which portion of a project is SLFRF.

B. Solicitations

- Agency/IHE must complete Approved Expenditure Category (EC) on the *SLFRF Federal Funds Contractor Terms and Conditions*.
 - Specific EC’s can be found in Appendix A of the *Compliance and Reporting Guidance State and Local Fiscal Recovery Funds* available on the OSC website.
 - **All projects funded by the Revenue Loss Restoration Cash Fund (RLRC) are EC 6.1 Provision of Government Services.**
 - Other construction EC categories if funded outside of the RLFC include:
 - EC 1.4 Prevention in Congregate Settings (Nursing Homes, Prisons/Jails, Dense Work Sites, Schools, Child care facilities, etc.)
 - EC5.1 through EC5.18 – Infrastructure

- All Solicitations for consultant or construction services must include *Supplementary General Conditions: Federal Provision (SC-SGC)* and *SLFRF Federal Funds Contractor Terms and Conditions* in the solicitation document

C. Contracting

- Purchase Orders (PO): If using a Construction Purchase order, all OSA policy requirements are still in place. (PO's may not be used for professional services)
- All Contract Agreements and Purchase Orders must include the *Supplementary General Conditions: Federal Provision (SC-SGC)* and *SLFRF Federal Funds Contractor Terms and Conditions*.
- Consultants and Contractors must sign and return SLFRF Federal Funds Contractor Terms and Conditions.
- Agency/IHE must confirm if their vendor has been disbarred on SAM.gov.
 - Disbarred vendors may be found at: <https://sam.gov/search>
 - In order to search for a contractor or subcontractor, you will need the business name, either their cage number, or their UEI number.
 - If a contractor or subcontractor is on the disbarred list, they can not be awarded a contract for work on the project.

D. Consultants and Contractors

- ~~All contractors and subcontractors must register with SAM.gov. They must maintain compliance with SAM.gov for the length of the project.~~
 - ~~<https://sam.gov/content/entity-registration>~~
- All consultants and contractors need to have a Unique Entity Identifier (UEI). They do not need to have full registration with SAM.gov. If they previously had a DUNs number they were automatically given a UEI.
 - [Obtaining a Unique Entity Identifier \(UEI\) from SAM.gov](#)
 - [Checking for SAM.gov Registration and/or UEI](#)

E. Reporting

- Reporting requirements by each state agency/institution is ~~still being refined~~ available from the Office of the State Controller. ~~This policy will be updated when available.~~ <https://osc.colorado.gov/american-rescue-plan-act>

IV. ALREADY UNDER CONTRACT

If professional services or construction contracts are already awarded, the following steps should be taken:

- Vendor to register on SAM.gov and provide Unique Entity ID (UEI) number to agency/IHE.
- Agency/IHE must confirm if their vendor has been disbarred on SAM.gov.
 - If disbarred, agency is required to cancel the contract and re-solicit/contract. Please reach out to OSA for guidance should this occur.
- Amendments will need to be executed to add the *SLFRF Terms and Conditions* and the *Supplementary*

General Conditions - Federal Provision (SC-SGC) to their contracts.

- These two forms can be found on the OSA website with the Contract Exhibits.
- Each prime vendor will need to certify compliance with the SLFRF grant. This is the first page of the *SLFRF Terms and Conditions*.
- It is possible that general contractors will have subsequent change orders in order to comply with the Federal Provisions. Examples might include compliance with Procurement of Recovered Materials, Domestic Preference of Procurements, Equal Opportunity Employer, Davis Bacon Act.

V. ADDITIONAL RESOURCES

Office of the State Controller

American Rescue Plan Act <https://osc.colorado.gov/american-rescue-plan-act>

SLFRF Q&A Document: https://docs.google.com/document/d/1vW1TIK2Y_kQMXJ2QDIacK-eXvwz-6iEmnE_T1jzUdCE/edit

SLFRF Capital Expenditure Projects https://drive.google.com/file/d/1fxk-Z_f4B7eWicjO8ltgjDPHcp-w6VeC/view

Federal Department of Treasury

Coronavirus State and Local Fiscal Recovery Funds, Final Rule: Frequently Asked Questions: <https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-FAQ.pdf>

END OF POLICY