



## Montana Procurement Guidance for Local Governments Using State and Local Fiscal Recovery Funds (ARPA)

**THE INFORMATION IN THIS DOCUMENT IS PROVIDED AS GUIDANCE ONLY AND IS STATIC.  
IT DOES NOT CONSTITUTE LEGAL ADVICE.**

**Local governments should consult the resources identified below and their legal counsel to ensure their processes follow the most current applicable local, state, and federal requirements.**

**When considering which rules to follow (federal, state, or local requirements),  
an entity must comply with the most restrictive requirements.**

### Guidance and Resources

The US Department of Treasury (US Treasury) issued an [Interim final rule](#) implementing the State and Local Fiscal Recovery Funds under the American Rescue Plan Act (ARPA) and outlining how local governments can use Local Fiscal Recovery Funds. US Treasury also published general information that provides further details regarding use of the funds.

Local government units should consult the resources listed above, as well as legal counsel or subject matter experts, for assistance in determining whether a proposed use of Local Fiscal Recovery Funds is eligible. Local governments should also review the requirements, compare them to their current policies and procedures, and consult with legal counsel to evaluate. In addition, all ARPA awardees should review [2 CFR Part 200 Subpart D](#), as this section describes the requirements most applicable to local governments.

**When considering which rules to follow (federal or local requirements), an entity must comply with the most restrictive requirements.**

#### US Treasury Resources\* for State and Local Fiscal Recovery Funds:

- [FAQs](#)
- [FAQs for Non-Entitlement Units](#)
- [Compliance and Reporting Guidance](#)
- [Quick Reference Guide](#)

\*These resources are updated regularly; local governments should be sure to review [US Treasury's website](#) for the most updated information and sign up to receive email updates using the "Receive COVID-19 Relief Updates" button.

#### Uniform Guidance

The US Treasury guidance should be read in concert with the award terms and conditions and other applicable regulatory and statutory requirements, including the [Uniform Guidance \(2 CFR Part 200\)](#), which is an authoritative set of requirements for expending federal funds. Most of the provisions of the Uniform

Guidance apply to State and Local Fiscal Recovery Funds, including the Cost Principles and Single Audit Act requirements.

### **Assistance Listings**

Local governments should refer to the [Assistance Listings](#) for detail on the specific provisions of the Uniform Guidance that do and do not apply. To access this information, search for Assistance Listing Number (ALN) 21.027 (formerly known as CFDA number) on the Assistance Listings webpage and review the section on “Compliance Requirements.” It is important that local governments comply with these requirements to ensure that money is spent properly, without fraud, waste, and abuse, and is not subject to recoupment in the future due to non-compliance. Local governments that are unfamiliar with the Uniform Guidance should consider training or consulting with experts to ensure their compliance.

### **General Requirements for Procurement Programs**

As required under 2 CFR 200, a local government’s procurement program must address the following:

- **Full and Open Competition**  
Entities must provide for full and open competition in procuring goods, services, and construction. Situations must be avoided that may prevent competition, such as placing unreasonable requirements on firms to qualify noncompetitive pricing practices between firms, contractors, or affiliated companies, or specifying only a “brand name.”
- **Effective Internal Controls**  
Updated guidance emphasizes written, effective internal controls. 2 CFR 200.303 requires each recipient establish and maintain effective internal controls to provide reasonable assurance that federal awards comply with all federal regulations and terms and conditions.
- **Documented Procedures and Policies**  
Entities must document procurement procedures and policies. If procedures are not currently documented, entities should make this a priority. If policies already are documented, entities should review those policies and ensure they incorporate and follow applicable regulations. These procedures must ensure the following:
  - All solicitations clearly and accurately describe the requirements of the goods, services, or construction to be procured; and
  - All solicitations must identify all requirements that bidders must fulfill and the factors used in evaluating bids.

In addition, if policies include a prequalified list of persons, firms, or products used in procuring goods, services, or construction, the list should be current and include enough qualified sources for open competition.

- **Advance Payments & Reimbursements**  
Entities must have written procedures that address collecting payments of federal funds and specific requirements associated with interest earnings that may be realized on advance payments. Policies should discuss how an entity will minimize the time between draws and actual disbursements (2 CFR 200.302(b)(6)).

- **Monitoring and Oversight**  
Entities must monitor vendors and contractors to ensure they perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. This requirement supplements a similar requirement in which contracts only are awarded to those that use funds responsibly and in accordance with the agreement's terms.
- **Conflicts of Interest**  
Entities must have written policies about conduct of employees involved in the selection, award, and administration of contracts. These policies must cover both organizational and personal conflict of interest to prevent unfair or noncompetitive awards being provided. These policies also must include disciplinary actions for any violations of the conflict-of-interest standards.
- **Necessary Purchases**  
Entities must avoid unnecessary or duplicative purchases. To this end, an entity should consider the most efficient and effective approach to purchases, e.g., bulk purchasing, lease versus purchase, agreements for use of common or shared goods and services, use of federal excess and surplus property as opposed to purchasing new equipment, etc.
- **State or Local Geographical Preferences**  
Unless federal statutes specifically mandate or encourage geographical preference, all entities must prohibit using statutorily or administratively imposed state or local geographical preferences when conducting procurements.
- **Records**  
Entities must maintain documentation to support the history of the procurement, i.e., rationalization for method used, contractor selection or rejection, basis for contract price, etc.

## Procurement Methods

Table 1 (attached) describes the types of procurements for goods and services that awardees must undertake using ARPA funds. **All bids and/or RFPs must be open and competitive** ([2 CFR 200.319](#) and [MCA 18-4-122](#)).

Non-competitive bids are allowed if:

- The contract is less than one of the micro-purchase thresholds:
  - Federal micro-purchase threshold (\$10,000): An entity should use the federal threshold if using Local Fiscal Recovery Funds (Direct-Treasury Funds).
  - State micro-purchase threshold (\$10,000): An entity should use the state threshold if receiving State Local Fiscal Recovery Funds from a state agency (Pass-Through Funds).
- The item is only available from a single source (sole source).
- The public emergency will not permit a delay resulting from a public competitive bid process (exigency).
- The awarding agency expressly authorizes a non-competitive procurement process, State-requirement to resolicit before direct negotiation.
- After solicitation, competition is determined to be inadequate. Entities using receiving State Local Fiscal Recovery funds (Pass-Through Funds) must also resolicit before entering into direct negotiation.

## Contract Provisions

All federally funded contracts that the non-federal entity enters will need to contain the following provisions:

- Contracts for more than \$10,000 must address termination for cause or convenience.
- Contracts for more than \$250,000 must address administrative, contractual, or legal remedies in instances where contractors breach contract terms and provide for penalties as appropriate.
- Construction contracts must contain the “Equal Employment Opportunity” clause found at [41 CFR 60-1.4\(b\)](#)
- Contracts over \$100,000 will require an anti-lobbying amendment. See sample amendment [here](#).
- Contracts must comply with requirements of [§ 200.321 Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms](#). For information on Disadvantaged Business Enterprises in Montana, visit: <https://www.mdt.mt.gov/business/contracting/civil/doing-business.aspx>.
- Contracts must comply with requirements of [§ 200.322 Domestic Preference for Procurements](#).
- Projects over \$10 million using Local or State Fiscal Recovery Funds should consult US Treasury's [Compliance and Reporting Guidance](#), Page 21, for information regarding Davis Bacon or Mini-Davis Bacon requirements.

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Consult the resources provided and legal counsel to ensure compliance with regulations.**

**This document was compiled by the Montana Department of Administration,  
Department of Commerce, and Department of Natural Resources and Conservation.**



**TABLE 1 – Procurement Guide**

The information below is guidance only and is static. It does not constitute legal advice.

	State of Montana			Federal			
	<i>Goods &amp; Services MCA Title 18, Chapter 4</i>	<i>Construction MCA Title 18, Chapter 4</i>	<i>Licensed Professional Services MCA Title 18, Chapter 8</i>	<i>Goods &amp; Services 2 CFR 200s</i>	<i>Construction 2 CFR 200s</i>		
\$250,000 +	Competitive Invitation for Bid (IFB) or Request for Proposals (RFP) Award to lowest responsive bidder	Competitive Invitation for Bid (IFB) Award to lowest responsive bidder	Request for Qualifications (RFQ) Award to most qualified & negotiate rate	Competitive Proposals Award to lowest responsive bidder	Sealed bids Award to lowest responsive bidder	\$250,000 +	
\$100,000 - \$250,000				Small Purchases Minimum 3 Rate Quotes Award to lowest responsive bidder	Small Purchases Minimum 3 Rate Quotes Award to lowest responsive bidder	\$100,000 - \$250,000	
\$50,000 - \$100,000	Limited Solicitation Minimum of 3 Quotes Award to lowest responsive bidder	Limited Solicitation Minimum of 3 Quotes Award to lowest responsive bidder					
\$10,000 - \$50,000		Direct negotiation Rotate vendors				\$10,000 - \$50,000	
\$0 - \$10,000	Direct negotiation No Quotes Rotate vendors	Direct negotiation No Quotes Rotate vendors		Micro purchases No Quotes Equitable Distribution	Micro purchases No Quotes Equitable Distribution	\$0 - \$10,000	

## LIMITED SOLICITATION / SMALL PURCHASE WORKSHEET

Subrecipient: \_\_\_\_\_

Agreement #: \_\_\_\_\_

<u>PRODUCT/WORK DESCRIPTION</u>		<u>BRAND/MODEL (Equipment)</u>	
	<b>Vendor 1</b>	<b>Vendor 2</b>	<b>Vendor 3</b>
1. Vendor Name	1.	1.	1.
2. Contact Person	2.	2.	2.
3. Phone/Email	3.	3.	3.
4. Date of Outreach	4.	4.	4.
Price Quoted			
Vendor Awarded*			

Three attempts to contact can be considered a quote price of “no response” and no additional attempts are required.

\*Work should be awarded to the most cost-effective option that can provide the work/supplies required. Items such as shipping charges and travel distances should be included in determination of the most cost-effective option.