

Office Hours – School Construction – April 19, 2023

Agenda

- Davis-Bacon Incident Report
- Webinar Reminder
- Buy American Act
- Breaking/Consolidating Procurement Opportunities
- Federal Non-Competitive Procurement
- Q & A

Participants

- Cassandra Ryan, AOE Director of Regulatory Compliance and Risk Management
- Abby Houle, School Finance Analyst II
- Jill BriggsCampbell, AOE COVID-19 Federal Emergency Funds Manager
- Kevin Doering, Education Programs Coordinator I

Davis Bacon Violation Incident Report

Vermont had its first LEA to report a Davis-Bacon violation to USED and DOL. They received a positive response from USED; USED responded very quickly and with “no further action required”. This LEA was very thorough in their report and in what they did to fix any violations which rendered this response.

Davis Bacon - Update

- USED has responded to the first VT LEA that notified them of a compliance issue with Davis Bacon.
- Turn around time for response was very fast
 - Submitted 4/7/23 – USED Response received 4/13/23
- The situation involved multiple issues:
 - Missing DB requirements in the RFP (but included in contract)
 - Not collecting certified payrolls for a period of time at the beginning of the project (corrected moving forward)
 - Some wages not meeting the DB \$ requirements (corrected with retro pay and adjusted moving forward)
- USED responded with positive appreciation that the LEA took timely steps to resolve the non-compliance and asked for the LEA to let them know if they are “unable to resolve the discrepancy” – no further action was required by USED.

Davis Bacon Webinar Information:

- April 26th @ 2:30pm-4:30pm.
- PLEASE use this link to register: <https://ems8.intellor.com?do=register&t=1&p=847504>.
- Ask questions because this can help to signify to USED the quantity and quality of questions. Hearing about our specific districts' challenges will also be helpful.
- You must register and capacity is limited; **register early and logon early**- entry will be cutoff as soon as the webinar reaches capacity regardless of your registration.

Davis-Bacon Webinar Reminder

- USED is hosting with DOL support a Davis Bacon Compliance and Oversight webinar
- April 26th @ 2:30pm-4:30pm.
- Overview of how federal funding recipients can meet their obligations under the Davis-Bacon labor standards, including best practices for providing guidance and compliance oversight to sub-recipients and contractors.
- Please use this link to register:
<https://ems8.intellor.com?do=register&t=1&p=847504>
- Reminders:
 - Registration is required and capacity is limited.
 - AOE has confirmed that while the webinar is directed towards SEAs, it is also appropriate for LEAs to attend.
 - Will likely be general info, but we encourage folks to use the opportunity to ask questions in the chat.



Buy America Act- Does it apply to ESSER II and/or ARP ESSER?

General answer is no. However, if you have other braided funds that that legislation applies to, then it would. Note: **Domestic Preference does apply and must be included in your contract**

Do the Buy American Act provisions apply to ESSER II or ARP-ESSER?

- No (unless braided with other funds that do) but 2 CFR § 200.322 Domestic Preference does apply.
- (a) 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 contracts and purchase orders for work or products under this award.* (b) For purposes of this section: (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- *Emphasis added for presentation*



Breaking/Consolidating Procurement Opportunities

- You can break up or consolidate procurement opportunities in order to get more bids
- Bid environment- remind you that when dealing with federal funds you can consolidate or break up projects- encouraged to do this in pursuit of multiple bids and competitive procurement.
 - Part of larger issue of getting multiple quotes- many LEAs facing this
 - Document this- you still may only get limited number of bids, but be sure to document this action taken
- **But, don't artificially break up or consolidate just to avoid a procurement requirement**
- If someone got say an IAQ grant or something and they consolidate them, all have to comply with the most restrictive policy
- Breaking up projects can be nuanced feel free to contact AOE for guidance

Breaking / Consolidating Procurement Opportunities

- 2 C.F.R. 200.318(d) encourages subrecipients to consider breaking out or consolidating opportunities to obtain the most economical pricing, but this is also a great strategy being used by some LEAs to create a competitive bid package to attract bids in a difficult bid climate.

Non-competitive Procurement

Federal Non-Competitive Procurement

- 2 C.F.R. §200.320(c)
- *Noncompetitive procurement.* There are only five (5) circumstances in which noncompetitive procurement can be used.
- Remember that if over \$40K and a procurement that triggers VT Public Bid Law 16 V.S.A. you must comply with both Federal and State.



Question and Answers:

Question: I'm sure this has been asked multiple times, if we have concept approval for multiple construction projects in ARP ESSER and we need to change the scope (remove a building from the project), do we just do an amendment or is there a different process as it is just at the concept approval level?

Answer: Substantive changes require you to reach out to federal construction inbox and ask to amend concept approval and then you will go in there and amend without going to project approval

- Recent example- sort of extreme, but bid from last year and then costs doubled this year—so the LEA had to update their ARP ESSER plan and get an updated school board letter- you can submit minutes-

Question: When we have the engineering that supports our originally approved concept do we then need to reopen our grant when we submit it for your review? We have concept approval

Answer: You will go back to EVT and get project approval for your RFP

- Yes bidder has to be selected before you will receive Project Approval from AOE
- We need plans, final budget, etc. make sure RFP is complete with bonding policy and Davis-Bacon prevailing wages and domestic preference provision
- <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200#200.322>

Question: Can you please confirm that as part of phase two approval "proof of school board approval" we can provide either a signed letter from the school board chair or school board meeting minutes that state the projects have approval?

Answer: Confirmed

Question: Is bonding requirement for total project cost or just federal dollar amount? I.e. project is \$300,000 with \$200,000 Federal funds and the remainder local dollars

Answer: Whole contract has to be bonded- passed on the contract value not on just the federal portion

Question: Bid waiver requirements.

Answer: if you are using federal dollars you had a small purchase- 40k-250k. If you met small purchase state requirements and did prior approval. Document, document, document

Question- are there 2 forms of bid waiver

- No no no - 2 requirements: bid waiver from the state public bid law Title 16, that comes from the agency of education gives waiver exception to follow Title 16
- Second application is very different set of circumstances- the circumstances shouldn't be conflated
- Finding the waivers: Home page →search bid waiver →then click federal fiscal services- [AOE Fiscal Services](#) and [Non-competitive Procurement Request- AOE](#)

Question: Is there a single document that lists all of the contract required language?

- There is a school construction overview and a slide deck; all CFRs that have to be included- [School Construction- AOE](#)
- Prevailing wages- attend webinar

Energy Audits & Facility Assessments

- Facility Assessments are ramping up; they will continue to a very busy summer. You will continue to hear from Andrew Smith and Anthony, work with them to schedule. Get the energy audit back to Marty Spaulding to streamline Assessment generation. Energy audit is a requirement of Act 72.

Marty Spaulding with PCI will be reaching out to you requesting the following:

- Electricity - Two (2) years of Electricity usage broken down by quantity and cost for each building/meter, by month. Include any additional cost such as for demand charges.

Primary Heating Fuel - Two (2) years of fuel usage broken down by quantity and cost for each building, by month/delivery (indicate the fuel used such as #2 Oil, Natural Gas, Propane, WoodChips or Pellets)

Secondary Fuel -If a secondary or backup fuel is used, provide two (2) years of any heating fuel usage broken down by quantity and cost for each building, by month/delivery (indicate the fuel used such as #2 Oil, Natural Gas, Propane, WoodChips or Pellets)

Alternate Fuel - If any additional fuel is used for other areas such as science labs, kitchen use or outbuildings, provide two (2) years of usage broken down by quantity and cost for each building

Water Usage - Two (2) years of Municipal Water usage broken down by quantity and cost for each building/meter, by month. Please indicate if a well is used and if metered, please provide usage.

Sewer Usage - Two (2) years of Municipal Sewer usage broken down by quantity and cost for each building/meter, by month. Please indicate if an onsite septic system is used.

Floor/Building Plans - Electronic copy of floor plans for each building, in PDF format, and include square footages if available. Also, provide an electronic copy of Mechanical, Electrical & Plumbing (MEP) if available. If you do not have access to digital blueprints, please let us know, and we will do our best to assist you in digitizing these files.

Biomass Heating System - If the school has a wood chip or pellet biomass heating system in place, please provide an estimated installed cost for the system and date of installation.

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