

TO: Suburban Purchasing Cooperative
FROM: Dan Listug, Manager of Legal and Government Relations
Bill Otto, Government Relations Associate
DATE: 11/18/2021
RE: American Rescue Plan (ARP) funds and Sourcewell cooperative contract use

The American Rescue Plan (ARP), along with the CARES Act and the similar recent legislation, were passed by Congress to address conditions specifically relating to the COVID-19 pandemic and ongoing public health emergency. This legislation contained direct funding for state, local, and tribal governments, and local education agencies (LEA).

Outside of the specific allowable categories of expenditures, the ARP legislation did not impose additional procurement requirements when purchasing utilizing this funding. Generally, state, local, and tribal governments, and LEA must only make purchases of items or services consistent to respond to the public health emergency and must do so following any applicable state or federal procurement requirements.

The legislation defines broad categories of what funding recipients could purchase consistent with the intent of the law. However, the law contains no additional discussion on purchasing rules applicable to the use of cooperative purchasing contracts for allowable expenses.

Because this is federal funding, the compliance standards applicable are Uniform Guidance (2 CFR § 200) rules and the USDE General Administrative Regulations (EDGAR) requirements, among other agency specific requirements. The procurement standards in 2 CFR § 200.317 to § 200.326 are applicable to purchasing agencies when conducting a compliance analysis for purchases using federal funding. Additional requirements may also apply based on the specific federal funding source. Purchasing agencies should verify state and agency-specific guidance and requirements as may be applicable.

As the contract-awarding government agency, Sourcewell cooperative purchasing contracts address certain elements of the federal procurement standards relating to the solicitation process. Specifically, Sourcewell:

- Maintains a documented procurement and conflict of interest policy (2 CFR § 200.318);
- awards to responsible suppliers (2 CFR § 200.318);
- provides for a full and open competitive solicitation process (2 CFR § 200.319);
- conducts a competitive sealed proposal process (2 CFR § 200.320); and
- includes Appendix II to Part 200 terms (2 CFR § 200.326, App. II to Part 200).

The remainder of analysis will depend upon the specific actions of the purchasing agency. Purchases may require a case-by-case analysis as a variety of variables are considered, including, but not limited to, the source of funding, agency-specific rules and other federal guidance, the type of purchase, the internal process of the purchasing agency, state law, local policy, etc. Ultimately, under all federal rules the final analysis of compliance with the guidelines is the responsibility of the purchasing agency.

Sourcewell seeks to provide as much information about the solicitation process to aid purchasing agencies with conducting the required compliance analysis under the applicable guidelines. Specific questions extending beyond documentation which can be provided by Sourcewell should be directed to the agency's respective counsel.