



# Federal Regulations for Construction Projects

Supported with Federal Stimulus Grant Funds from the United States  
Department of Education Headings

*This document provides local educational agencies (LEAs) information about using federal funds for construction projects. This document is geared towards raising awareness, and is not intended to be an exhaustive list of requirements. LEAs should contact their legal counsel to ensure they are meeting all the federal regulations regarding construction projects.*

All construction projects funded with federal stimulus grants must be necessary to prepare for, respond to and/or prevent COVID-19. LEAs that propose to use federal funds for construction must comply with all applicable federal regulations regarding construction. Failure to fully comply with any step or requirement may result in the denial of a project or return of applicable federal funds.

## PROCUREMENT PROCEDURES

Federal law requires LEAs to provide full and open competition consistent with their procurement procedures that reflect federal, state, and local laws and regulations (2 CFR §200.318 - 2 CFR §200.320). At a minimum, LEAs' procurement of federal funds must meet the [regulations defined in this attachment](#).

## MINOR REMODELING VERSUS CONSTRUCTION

LEAs should contact their legal counsel to determine whether a project is considered *minor remodeling* or *construction*. *Minor remodeling* means minor alterations in a previously completed building. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building. The term does not include building construction, structural alterations to buildings, building maintenance, or repairs (34 CFR § 77.1).

Important notes:

- All contracts remodeling or construction contracts over \$2,000 must meet all [Davis-Bacon Act requirements](#).
- All HVAC projects must meet the [standards set by the American Society of Heating, Refrigerating, and Air Conditioning Engineers \(ASHRAE\)](#): ASHRAE-90 A-1980 (sections 1-9); ASHRAE-90 B-1975 (sections 10-11); and ASHRAE-90 C-1977 (Section 12)

## USDE'S GUIDANCE FOR CONSTRUCTION PROJECTS

The United States Department of Education (USDE) states that LEAs must meet all applicable requirements that are detailed in 34 CFR §§ 75.600–75.618, as well as in [OMB Standard Form 424D \(Assurances for Construction Programs\)](#), including the assurances relating to labor standards; flood hazards; historic preservation; health and safety, energy conservations, and coastal barrier resources. Note: the OMB construction assurances will be part of a set of construction specific assurances collected in WISEgrants.

USDE highlighted some of the relevant part 75 requirements that must be considered before a new construction project in their FAQ document released in May 2021. Those requirements are listed here.

1. Has the LEA completed an environmental impact assessment before initiating the construction and fully considered any potential environmental ramifications before proceeding with the project (34 CFR § 75.601);
2. Has the LEA considered the probable effects of proposed construction on any district, site, building, or structure that is included or eligible for inclusion in the National Register of Historic Places (34 CFR § 75.602)
3. Does the LEA have title or other interest in the site, including right of access, that is sufficient to ensure that the grantee will have use and possession of the facility for 50 years or the useful life of the facility, whichever is longer (34 CFR § 75.603);
4. Can the LEA begin the approved construction in a reasonable time period and have the final plans been approved before the construction is advertised or placed on the market for bidding (34 CFR § 75.605);
5. Can an LEA complete the project in a reasonable time period and consistent with the approved plans and specifications (34 CFR § 75.606);
6. Is the construction functional, economical, and not elaborate in design or extravagant in the use of materials as compared to other facilities in the State or other applicable geographic area (34 CFR § 75.607);
7. Do the LEA's plans and designs for the facilities comply with applicable Federal, State and local health and safety standards, as well as Federal requirements regarding access by persons with disabilities. (34 CFR §§75.609 and 75.610); and
8. Does the grantee have sufficient operational funds to operate and maintain the facility once the construction is complete and will the grantee operate and maintain the facility in accordance with all applicable Federal, State, and local requirements (34 CFR §§ 75.614 and 75.615).

USDE goes on to mention that if federal funds are used for construction, LEAs should also be aware that real property and equipment acquired or improved under a Federal award must be appropriately insured and LEAs must follow disposition instructions in the event that the

property or equipment is no longer needed (2 CFR §§ 200.310-200.313.) [USDE's Frequently Asked Questions: Elementary and Secondary School Emergency Relief Programs and Governor's Emergency Education Relief Programs May 2021.](#)

## **DAVIS-BACON ACT REQUIREMENTS**

See DPI's [Davis-Bacon and Related Acts Compliance and Federal Stimulus Funds](#) technical assistance for additional details regarding an LEA's responsibilities under the Davis-Bacon and Related Acts.

As is the case with all remodeling, construction, maintenance, and repair contracts using laborers and mechanics financed by federal education funds, an LEA that uses federal funds for minor remodeling, renovation, repair, or construction contracts over \$2,000 must meet all Davis-Bacon Act requirements (40 U.S.C. §§276a to 276a-7). Be sure to consult your legal counsel to ensure your LEA is meeting the requirements of the Davis-Bacon Act. Under the Davis-Bacon Act, LEAs are required to:

- Ensure contractors pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- Ensure contractors pay wages not less than once a week.
- Place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation.
- Include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), and comply with the provisions of the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874) in their contract
- Report all suspected or reported violations to the United States Department of Education.

*For more information about prevailing wage, LEAs should visit the Department of Labor (DOL) website: <https://www.dol.gov/agencies/whd/government-contracts/construction>*

## **BUDGETING FOR CONSTRUCTION PROJECTS IN WISEGRANTS**

In WISEgrants, additional fields will appear when construction budget items are selected in the budget dropdown menus. LEAs will be required to provide an estimated date for completion of the construction project and describe why this construction is necessary to meet the unique needs of responding to COVID-19.

Once the construction project has been budgeted, the LEAs will be prompted to sign off on an [additional list of construction assurances](#) before submitting the project (and the rest of the budget) for approval.

DPI is also required to collect data on the preservation of historic sites (34 CFR §75.602). LEAs will be required to choose one of the following responses in WISEgrants:

- The construction is not included in the National Register of Historic Places or is not eligible for inclusion in the National Register of Historic Places.
- The construction is included in the National Register of Historic Places or is eligible for inclusion in the National Register of Historic Places. (If an LEA chooses this option they will be asked to describe the relationship of the proposed construction to and the probable effect of the construction.)

LEAs can use the National Park Service's National Register Database at <https://www.nps.gov/subjects/nationalregister/database-research.htm> to determine if a property is included or eligible for inclusion.

## Additional Resources

[Federal Stimulus Funds Updates: Construction](#) (Google Slides)

[Federal Stimulus Funds Updates: Construction](#) (Video)

[Davis-Bacon and Related Acts Compliance and Federal Stimulus Funds](#) (Google Doc)

[How to Budget Construction and Minor Remodeling in WISEgrants for the Federal Stimulus Funds](#) (Google Doc)

---

### For Questions Contact

Federal Programs  
Idaho State Department of Education  
650 W State Street, Boise, ID 83702  
208 332 6800 | [www.sde.idaho.gov](http://www.sde.idaho.gov)