OHIO AUDITOR OF STATE
KEITH FABER

LOCAL GOVERNMENT OFFICIALS CONFERENCE

Day 1 - April 13, 2022

Presentation Slides & Handout Material for Experienced Officer Track

OHIO AUDITOR OF STATE
KEITH FABER

FEDERAL UNIFORM GUIDANCE PROCUREMENT REQUIREMENTS & ARPA UPDATE

Slides

OHIO AUDITOR OF STATE
KEITH FABER

Federal Uniform Guidance Procurement Requirements & ARPA Update

Local Government Officials Conference

April 13, 2022

Presented By: Marnie Fredrickson, Asst. Chief Deputy Auditor

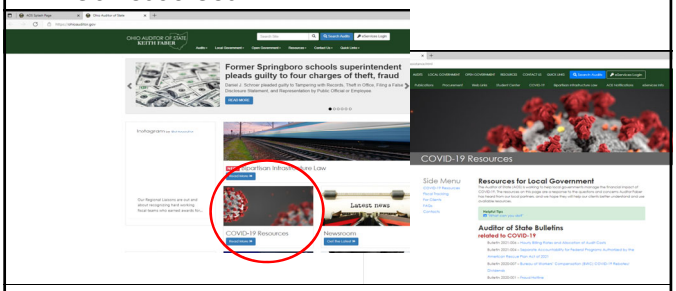
Efficient • Effective • Transparent 1

A Few Important Disclaimers…

- AOS must maintain independence under *Generally Accepted Government Auditing Standards*.
- This training is intended to serve as a practical reference, it is not intended to be, nor does it provide or constitute legal advice.
- Adherence to, application of, or use of this document with regard to a procurement subject to federal award funds does not guarantee the legal sufficiency of any procurement.
- Local governments should refer all legal questions concerning the sufficiency of a procurement in terms of federal procurement standards to their legal counsel.

Efficient • Effective • Transparent 2

AOS Resources



Efficient • Effective • Transparent 3

Uniform Guidance Act
2 CFR 200

- Subpart A, 200.XX Acronyms & Definitions
- Subpart B, 200, 1XX - General
- Subpart C, 200.2XX – Pre Award - Federal
- Subpart D, 200.3XX - Post Award - Recipients
- Subpart E, 200.4XX – Cost Principles
- Subpart F, 200.5XX – Audit
- 11 Appendices

Efficient • Effective • Transparent 4

Relevant Statutes

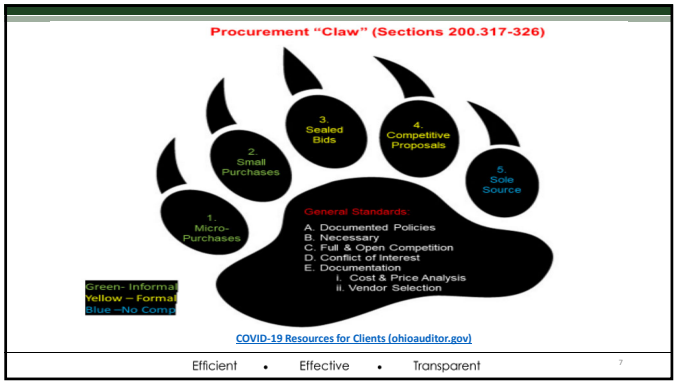
- 2 CFR §200.317 – Procurements by States
- 2 CFR §200.318 - .327 – General Procurement Requirements *(applicable to local governments)*
- 2 CFR §200 – Other Uniform Guidance Requirements, including Single Audit
- Also must comply with all applicable federal terms and conditions and state and local laws/regulations.

Efficient • Effective • Transparent 5

2 CFR §200.318
General Procurement Standards

a) Documented policies and procedures;
b) Contract oversight;
c) Written standards of conduct covering conflicts of interest;
d) Avoid unnecessary or duplicative items (e.g., lease vs. purchase analysis);
e) Encourages state and local intergovernmental agreements;
f) Encourages uses of Federal surplus property instead of buying new;
g) Encourages use of value engineering clauses;
h) Award contracts only to responsible contractors;
i) Maintain procurement records;
j) Limit use of time-and-materials contracts; and
k) Settle issues arising out of procurements

Efficient • Effective • Transparent 6



Uniform Guidance Procurement

What does reasonable cost mean?

- A cost is reasonable if it meets the prudent person test. Considerations:
- Whether the cost is generally recognized as ordinary and necessary.
- The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; federal, state, local, and other laws and regulations; and terms and conditions of the federal award.
- Market prices for comparable goods or services for the geographic area.
- Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the local government, its employees, the public at large, and the federal government.
- Whether the local govt. significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the federal award's cost.

Efficient • Effective • Transparent 8

Uniform Guidance Procurement

Subpart D, Procurement 2 CFR §200.302-.318:

- **Necessary purchases** – must avoid unnecessary or duplicative purchases. To this end, a local govt. 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.
  - Must have documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements to support competition.

Efficient • Effective • Transparent 9

Uniform Guidance Procurement

Subpart D, Procurement 2 CFR §200.318-.319:

- **Documented policies** –must document procurement procedures and policies consistent with state and local laws and regulations and conform to the Procurement rules in 2 CFR §200.317 through §200.327.
  - Procedures must ensure all solicitations clearly and accurately describe the technical requirements of the goods or services to be procured and 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 and services, the list should be current and include enough qualified sources for open competition.

Efficient • Effective • Transparent 10

Uniform Guidance Procurement

Subpart D, Procurement 2 CFR §200.303 & §200.319:

- **Competition** – must provide for full and open competition in procuring goods and services. This means situations must be avoided that may prevent competition, such as placing unreasonable requirements on firms to qualify noncompetitive pricing practices between firms or affiliated companies or specifying only a "brand name."
- **Internal controls**– UG emphasizes written, effective internal controls. 2 CFR §200.303 requires each recipient establish and maintain effective internal control to provide reasonable assurance that federal awards comply with all federal regulations and terms and conditions.

Efficient • Effective • Transparent 11

Uniform Guidance Procurement

Subpart D, Procurement 2 CFR §200.302-.318:

- **Oversight** –must monitor contractors to ensure they perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
  - Examples of oversight include making sure contractors adhere to the contractual obligations regarding scope of work, invoices are accurate for the work performed, and services are delivered in a timely manner.
  - Certain contracts, as discussed later, are inherently more risky and require careful oversight.

Efficient • Effective • Transparent 12

Uniform Guidance Procurement

Subpart D, Procurement 2 CFR §200.302-.318:

- **Oversight** –
  - If a local government lacks qualified personnel within its organization to undertake such oversight as required by 2 CFR § 200.318(b), the Federal government expects the local government to acquire the necessary personnel to provide the oversight.
  - Contractors selected to perform procurement functions on behalf of the local government are subject to the Uniform Rules and are precluded from bidding on contracts they oversee.

Efficient • Effective • Transparent 13

Uniform Guidance Procurement

Subpart D, Procurement 2 CFR §200.302-.318:

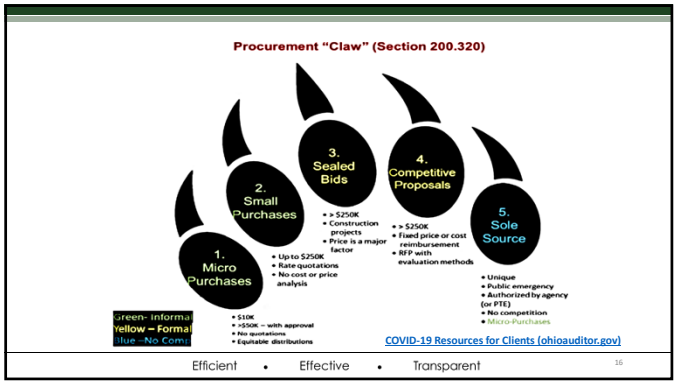
- **Conflicts of interest** –
  - Must have written policies about conduct of its employees involved in the selection, award, and administration of contracts.
  - Policies must cover both organizational and personal conflict of interest to prevent unfair or noncompetitive awards being provided.
  - Policies must prohibit participation if conflict exists.

Efficient • Effective • Transparent 14

Uniform Guidance Procurement

- **Conflicts of interest** –
  - Conflicts arise when an employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.
  - The officers, employees, and agents may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.
  - Local governments may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.
  - The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the local govt.

Efficient • Effective • Transparent 15



Procurement – Informal (2 CFR §200.320(a))

Micro Purchase

- May be awarded **without** competitive rate quotes if price considered reasonable based on **documented** research, experience, purchase history, etc.
- Distributed equitably among qualified suppliers
- Purchase cards may be used with approved, written procedures

Efficient • Effective • Transparent 17

Procurement – Informal (2 CFR §200.320(a))

Micro-Purchase Threshold $10,000 (or $2,000 if subject to Davis-Bacon Act)

If certain conditions are met*, with **Annual** Self-Certification, Increase Up to $50,000

With Federal Cognizant Agency Approval, Increase Above $50,000

*Must include justification, clear identification of the threshold and supporting documentation of **any** of the following:

- A qualification as low-risk auditee for most recent audit
- Annual internal institutional risk assessment to identify, mitigate, and manage financial risks, or
- For public institutions, a higher threshold consistent with state law

Efficient • Effective • Transparent 18

Procurement – Informal (2 CFR §200.320(a))

Small Purchase

- Aggregate dollar amount greater than micro-purchase threshold, less than simplified acquisition threshold (currently $250k).
- Must obtain **and document** price or rate quotations from adequate number of qualified sources.

Efficient • Effective • Transparent 19

Procurement – Informal (2 CFR §200.320(a))

Simplified Acquisition Threshold (SAT)

- Determined by non-Federal entity based on internal controls, risk evaluation, and documented procurement procedures.
- Cannot exceed $250,000 FAR threshold.
- Must perform cost or price analysis in connection with every procurement action in excess of the SAT, including contract modifications.

Efficient • Effective • Transparent 20

Procurement – Formal (2 CFR §200.320(b))

Sealed Bids

- Publically Solicited
- Firm, fixed-price contract awarded to responsible bidder with lowest price
- Must meet requirements in 2 CFR §200.320(b)(1)
- Must **document** cost and price analysis

Efficient • Effective • Transparent 21

Procurement – Formal (2 CFR §200.320(b))

Proposals

- Conditions not appropriate for sealed bids (generally because cost is not the only factor)
- Either fixed-price or cost-reimbursement contract awarded
- Must meet requirements in 2 CFR § 200.320(b)(2)
- Must **document** cost and price analysis.

Efficient • Effective • Transparent 22

Uniform Guidance Procurement

What About Breaking Out Procurements?

Local govts. may break down procurements to obtain a more economical purchase or permit maximum participation by small and minority businesses, women's business enterprises, and labor surplus area firms, when economically feasible.

However, local governments are not allowed to break down procurements in an effort to avoid the additional procurement requirements that apply to larger purchases.

Efficient • Effective • Transparent 23

Uniform Guidance Procurement

Subpart D, Procurement 2 CFR §200.318:

- **Time-and-Materials Type Contracts**– (aka: Open-ended contract price) May use **only** after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk.
  - Definition - contract where cost to a local government is the sum of:
    - The actual cost of materials; &
    - Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Efficient • Effective • Transparent 24

Uniform Guidance Procurement

Subpart D, Procurement 2 CFR §200.318:

- **Time-and-Materials Type Contracts**–
  - Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Each contract must set a ceiling price that the contractor exceeds at its own risk. Requires high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

Efficient • Effective • Transparent 25

Uniform Guidance Procurement

Subpart D, Procurement 2 CFR §200.318:

- **Intergovernmental agreements encouraged** where appropriate for procurement or use of common or shared goods and services.
  - Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.
- **Use of Federal excess and surplus property** also encouraged when feasible and reduces project costs.
- **Use of Value-Engineering clauses** in contracts for construction projects of sufficient size to offer opportunity for cost reductions.

Efficient • Effective • Transparent 26

Uniform Guidance Procurement

Subpart D, Procurement 2 CFR §200.318-.319:

- **Prohibited use of state or local geographical preferences** – Unless federal statutes specifically mandate or encourage geographical preference, must prohibit using statutorily or administratively imposed state or local geographical preferences when conducting procurements.
- **Records** –must maintain documentation to support the history of the procurement, rational for procurement decisions and method used, contractor selection or rejection, basis for contract price, etc.
  - Due consideration should be given in a shared service/intergovernmental arrangement.

Efficient • Effective • Transparent 27

Uniform Guidance Procurement

Subpart D, Non-Competitive Procurement 2 CFR §200.320(c):

- Can **only** be used if **one or more** apply:
  1. The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold;
  2. The item is available only from a single source;
  3. The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
  4. The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
  5. After solicitation of a number of sources, competition is determined inadequate.

Efficient • Effective • Transparent 28

Uniform Guidance Procurement

Non-Procurement - Steps to Take in Emergency or Exigent Circumstance:

- Write a justification to describe the emergency or exigent circumstances.
- Provide a brief description of the goods or services: Justify the need for the specific good or service being contracted to address the emergency or exigency circumstance.
- Estimate the expected dollar amount of the goods or services: A cost or price analysis is required for all procurement transactions above $250,000.
- Describe any known conflicts of interests and efforts made to identify possible conflicts of interests. If no efforts were made, explain why.
- Define and justify the period of emergency or exigency for the specific situation:
- Transition to a competitively bid contract as soon as the emergency or exigent period ends: Failure to plan for transition to a competitively bid contract cannot be the basis for continued use of the emergency or exigency exception.

Efficient • Effective • Transparent 29

Uniform Guidance Procurement

Non-Procurement – Additional Rules when Sole-Sourcing:

- Contracts must include the required contract clauses.
- Contract must include the federal bonding requirements if the contract is for construction or facility improvement.
- Contract must be awarded to a responsible contractor.
- Must complete a cost or price analysis to determine that the cost or price of the contract is fair and reasonable.
- Contract must not be a cost-plus-percentage-of-cost contract type.
- When using a time-and-materials contract, must comply with the applicable rules.
- Document any known conflicts of interest and any efforts that were made to identify possible conflicts of interest before the sole-sourced contract was awarded.

Efficient • Effective • Transparent 30

Uniform Guidance Procurement

Subpart D, Procurement:

- **What about Ohio Competitive Bidding Laws?**– Most restrictive laws and regulations apply. For example, if State law is more restrictive than Federal Procurement law, State law applies.
- Certain costs may be exempt from State Competitive Bidding laws but are not exempt under Federal Procurement Rules (e.g., professional services, text books, motor vehicles, fuel, cost-sharing contracts).
  - Must meet one of the exemptions under **2 CFR §200.320(c)**; these are the only exceptions to Procurement Rules.

Efficient • Effective • Transparent 31

Uniform Guidance Procurement

Subpart D, Procurement:

What about State Term Purchasing / Joint Contracting / Intergovernmental Agreements?

- Local governments are encouraged to collaborate on procurement actions for goods and services where the result will lead to cost savings.
- **However, proceed with caution** - Procurement Rules applicable to states differ from those applicable to local governments - *more on this soon!*
- Full and open competition must be maintained.
- Local governments wishing to utilize intergovernmental agreements, etc. must be able to demonstrate that the procurements complied with **all** applicable federal procurement under grant rules before undertaking.

Efficient • Effective • Transparent 32

Uniform Guidance Procurement

Differing State vs. Local Government Procurement Rules …What?

- State entities will always follow the procurement standards found at 2 C.F.R §200.317, which directs them to utilize their own procurement standards, comply with applicable guidelines regarding procurement of recovered materials as set forth in 2 C.F.R. § 200.322, and include all necessary contract provisions required by 2 C.F.R. § 200.326.
- Conversely, local governments must adhere to their own procurement policies and procedures, applicable state and/or local laws, and the federal procurement under grant requirements found at 2 C.F.R. §§ 200.318-326.

Efficient • Effective • Transparent 33

Uniform Guidance Procurement

Differing State vs. Local Government Procurement Rules …What?

- Further, as it relates to local governments, the federal procurement under grant standards at 2 CFR § 200.319(b) prohibit the use of statutorily or administratively imposed local, state, and/or local geographic preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preferences.
- However, because the state is not subject to regulation at 2 CFR §200.319, the regulation bears no applicability to the question presented in this scenario. If Ohio law requires the State to comply with geographic preferences in Procurement, the State can allowably do so under 2 CFR §200.317.

Efficient • Effective • Transparent 34

Procurement – Additional Uniform Rules

Ensure contractor is not suspended, debarred, or excluded on SAM.gov (2 CFR §200.214; 2 CFR §200 Part 180)

When possible, must use minority businesses, women's business enterprises, and labor surplus area firms (2 CFR §200.321)

Buy American (2 CFR §200.322)

Efficient • Effective • Transparent 35

Procurement – Additional Uniform Rules

Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR §200.216) (e.g., Huawei Technologies Company)

Never contract with the enemy (2 CFR §200.215 & 2 CFR Part 183).

Various other contract provisions as outlined in Appendix II to 2 CFR Part 200 – these are items your statutory legal counsel should assist with.

Efficient • Effective • Transparent 36

Uniform Guidance Procurement

What about Prepositioned Contracts?

Local government must ensure –

- The contract was procured in compliance with the applicable procurement under grant rules for its entity type (state or non-state entity rules);
- The work to be performed falls within the scope of work of the prepositioned contract and the new work does not create a **cardinal change** to the prepositioned contract.
- The contract's scope of work must adequately encompass the type and extent of future work.

Efficient • Effective • Transparent 37

Uniform Guidance Procurement

DOCUMENT!!! DOCUMENT!!! DOCUMENT!!!

- Must maintain detailed records to support the history of the Procurement, including, but not limited to, the rationale for the method of procurement, the selection of the contract type, the contractor selection or rejection, and the basis for the contract price;
- Acquisition planning information and other pre-solicitation documents;
- The statement of work/scope of services;
- A list of sources solicited;
- Copies of published notices of proposed contract action;

Efficient • Effective • Transparent 38

Uniform Guidance Procurement

DOCUMENT!!! DOCUMENT!!! DOCUMENT!!!

- Copies of the solicitation documents, as well as any addenda or amendments;
- The notice to unsuccessful bidders or offers and a record of any debriefing;
- A record of protests, disputes and claims;
- Copies of bid, performance, payment, and other bond documents;
- The notice to proceed; and
- Steps taken to comply with the affirmative socioeconomic steps required by 2 CFR § 200.321.

Efficient • Effective • Transparent 39

Uniform Guidance Procurement

What happens if the Federal Procurement Rules are not followed?

Treasury has authority to take any of the remedies outlined in 2 CFR §200.339, including:

- Temporarily withhold cash payments until the deficiency is corrected;
- Disallow, or deny the use of, the grant funds or any matching credit for all or part of the activity that is deficient;
- Suspend or terminate the federal grant award;
- Initiate suspension or debarment proceedings;
- Withhold any further federal awards for the project or program; or
- Take other remedies that may be legally available.

Efficient • Effective • Transparent 40

Resources

Full Uniform Guidance Text
www.ecfr.gov

Code of Federal Regulations
A point in time eCFR system
eCFR

Auditor of State - Refer to COVID-19 Resources
www.ohioauditor.gov

US Department of the Treasury
home.treasury.gov

System for Award Management (SAM) Suspended/Debarred Parties Search
SAM.gov | Exclusions

Efficient • Effective • Transparent 41

Resources

Federal Procurement Bear Claw Info. Graphic
Procurement_Claw.pdf (ohioauditor.gov)

Federal Emergency Management Procurement Resources
Contracting with Federal Funds for Goods and Services Before, During and After Disasters | FEMA.gov

Environmental Protection Agency's Procurement for Drinking Water and Wastewater Utilities
Prepare for Funding: Develop Emergency Procurement Policies and Procedures for Drinking Water or Wastewater Utilities | US EPA

Environmental Protection Agency's Comprehensive Procurement Guideline
Comprehensive Procurement Guideline (CPG) Program | US EPA

Efficient • Effective • Transparent 42

Questions?

Contact

Web: OhioAuditor.gov
Email:
mafredrickson@ohioauditor.gov
Social: @OhioAuditor

OHIO AUDITOR OF STATE
KEITH FABER

FEDERAL UNIFORM GUIDANCE PROCUREMENT REQUIREMENTS & ARPA UPDATE

Handout #1

www.fema.gov/procurement-disaster-assistance-team

Top 10 Procurement under Grants Mistakes

1

Restricting **full** & **open** competition

2

Not performing detailed **price or cost analysis** for procurements above $250,000

3

Engaging in a **sole-sourcing** procurement without documenting emergency or exigent situation

4

Continuing work under a sole-source contract **after the urgent need has ended**

5

Not making and documenting efforts to take **all "affirmative steps"**

6

Awarding a "**time-and-materials"** contract without a **ceiling price** and **documenting why no other contract type is suitable**

7

Not including the **required contract clauses**

8

Awarding a "**cost-plus-percentage-of-cost"** or "**percentage-of-construction-cost"** contract

9

Awarding a contract to **contractors that are suspended or debarred**

10

Not **documenting all steps of a procurement** to answer questions that could arise months or years later

Avoiding these obstacles can speed up your road to recovery

OHIO AUDITOR OF STATE
KEITH FABER

FEDERAL UNIFORM GUIDANCE PROCUREMENT REQUIREMENTS & ARPA UPDATE

Handout #2

Procurement Disaster Assistance Team

Key Points for Non-State Entities on How to Avoid the Top 10 Procurement Under Grant Mistakes

In the aftermath of a presidentially-declared disaster, FEMA provides grant funding to local and tribal governments, institutions of higher education, hospitals, and certain private non-profit ("PNP") entities (collectively, "non-state entities") to assist them with recovering from the event.

Non-state entities must comply with the federal procurement standards to ensure their procurements are eligible for federal grant funding. These standards are found in Title 2 of the Code of Federal Regulations ("CFR"), sections 200.318 through 200.326 and apply to presidential declarations issued on or after December 26, 2014.

Below is a list of the top 10 mistakes non-state entities make when trying to comply with the requirements of 2 C.F.R. §§ 200.318-200.326.

This document will help to give a better understanding of these top 10 mistakes and how best to avoid making them.

1. Restricting Full and Open Competition

The Uniform Rules require that all procurement transactions be conducted in a manner that provides full and open competition. This means that a complete requirement (scope of work required) is publicly solicited and all responsible sources that are interested in doing so are permitted to compete.

To make sure that there is full and open competition:

- Don't place unreasonable requirements on firms, require unnecessary experience, or specify only a "brand name" product.
- Don't use of state, local, or tribal geographical preferences in the evaluation of bids or proposals.
- Don't allow contractors that develop or draft specifications, requirements, statements of work, invitations for bid or requests for proposal to compete for and be awarded the subsequent contract for that work.
- Don't award noncompetitive contracts to consultants that are on retainer contracts.
- Be aware of noncompetitive pricing practices between firms or affiliated companies.
- Have written standards of conduct covering conflicts of interest and governing the performance of your employees engaged in contract award and administration.

Full and open competition issues often arise if not using the proper procurement method to ensure competition or if not properly assessing and documenting whether one of the exceptions fits when sole-sourcing. The procurement methods allowed are:

1. Micro purchase procedures (for purchases under a certain dollar amount which is currently $10,000 – or the equivalent local or state threshold, whichever is lowest);
2. Small purchase procedures (for purchases under a certain dollar amount which is currently $250,000 – or the equivalent local or state threshold, whichever is lowest);
3. Sealed Bids (award to the lowest priced, responsive, and responsible bidder; recommended for construction contracts);
4. Competitive Proposals (award need not be made to the lowest priced offeror if award criteria establish award is to be based on some other non-price-related factor. Price must be a factor in the determination, but it does not have to be the only factor. For architectural/engineering service contracts, price does not have to be a factor in making the selection); and
5. Noncompetitive Proposals (sole source contracting based on specific circumstances) (see also Mistake #3 below).
    - The noncompetitive proposals method may be used <u>only</u> if the non-state entity has one of the following four circumstances exist:
        1. The item is available from only a single source (not the most convenient source);
        2. After solicitation of several sources, competition is determined to be inadequate;
        3. FEMA or a state pass-through entity expressly authorizes the non-state entity to use this method in response to a written request; or
        4. A Public emergency (threats to health, life or safety) or exigency (threats requiring an immediate response) exists that will not permit a delay resulting from competitive solicitation.

2. Not Performing a Detailed Price or Cost Analysis for Procurements Above $250,000

A non-state entity must conduct either a price or cost analysis for each procurement above the Simplified Acquisition Threshold, which is currently $250,000. If the non-state entity is required to perform a cost or price analysis at a number lower than the federal simplified acquisition threshold by a state or local statute/ordinance, regulation, or the non-state entity's own procurement policy, then the non-state entity must ensure it is compliant with its own more restrictive requirement.

A **price analysis** is the examination and evaluation of a proposed price without evaluating its separate cost elements and proposed profit. Price analysis is typically used when acquiring commercial items (which are items that generally maintain similar standards or quality and differ only in price) or when using the procurement through sealed bidding method.

A **cost analysis** is the review and evaluation of the separate cost elements (such as labor hours, overhead, materials, etc.) and proposed profit in a proposal and the application of judgement to determine how well the proposed costs represent what the contract cost should be. Cost analysis is typically used to establish the basis for negotiating contract prices when: (1) using the competitive proposals method; (2) using the sealed bidding method and price competition is not sufficient; (3) situations where price analysis by itself does not ensure price reasonableness; or (4) procuring professional, consulting, and architectural engineering services contracts.

3. Improperly Engaging in Sole-sourcing (Non-competitive) Procurement

One of the foundations of the procurement under grants rules is full and open competition. If the non-state entity is not going to use a competitive process to purchase goods and services, the non-state entity needs to document the reason and for emergency and exigency circumstances, the date those circumstances started and ended.

The documentation justifying the use of sole-sourcing should include, but is not limited to, a brief description of the product or service you are procuring, an explanation of why it is necessary to contract non-competitively, and the impact to your community if you are not able to use the non-competitively procured contract. If a non-state entity is going to use this procurement method, it must still comply with other requirements, including: (1) the contract must include the required contract clauses; (2) the contract must include the Federal bonding requirements, if the contract is for construction or facility improvement; (3) the non-state entity must award to a responsible contractor; (4) the non-state entity must complete a cost or price analysis; and (5) the non-state entity cannot use a cost-plus-percentage-of-cost contract.

4. Continuing Work under a Sole-source Contract After the Urgent Need Has Ended

An exigency or emergency period will last often for a short time. A contract procured under this circumstance can only be used while the exigency or emergency is ongoing. Once the emergency or exigency period ends, the contract must be re-solicited under full and open competition. Note: A contractor who fulfilled the requirement under

emergency or exigent circumstances cannot compete for the new contract **if** that contractor helped the non-state entity develop or draft specifications, requirements, statements of work, or solicitation documents in support of the competitive procurement.

5. Not Making and Documenting Efforts to Take All Socioeconomic "Affirmative" Steps

The non-state entity must take the six steps to involve small and minority businesses, women's business enterprises, and labor surplus area firms (collectively, target firms) in the procurement process:

1. Place qualified socioeconomic firms on solicitation lists;
2. Assure that socioeconomic firms are solicited whenever they are potential sources;
3. Divide total requirements, when economically feasible, into smaller tasks or quantities;
4. Establish delivery schedules, where the requirement permits, which encourage participation by socioeconomic firms;
5. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Require prime contractors to take steps (1) through (5) if they use subcontractors.

In most instances, local or state programs, such as Historically Underutilized Businesses initiatives and set-asides / quotas for use of these types of businesses, cannot replace or be substituted for a non-state entity taking the six affirmative steps provided in the regulation.

6. Improperly Awarding a "Time-and-materials" (T&M) Contract

T&M contracts can be used for a reasonable period of time <u>only when</u>: (1) there is a determination made that no other contract is suitable; (2) The contract includes a ceiling price that the contractor exceeds at its own risk; (3) the applicant maintains a high degree of contractor oversight; and (4) the T&M contract is used only for a reasonable amount of time.

This type of contract is often used where the scope of work or the duration of the work is unclear. Because this type of contract requires significant oversight to ensure costs are reasonable, the non-state entity should start thinking about switching to a different type of contract as soon as it awards a T&M contract.

Once the scope of work becomes clear, the non-state entity must switch to a different type of contract, like a cost reimbursement or fixed price contract.

7. Not Including the Required Contract Clauses

A non-state entity's contracts must contain the applicable contract clauses required by 2 C.F.R. § 200.326 and described in Appendix II to the Uniform Rules. Some of the provisions are based on sound contracting principles and others are required by other Federal laws, executive orders, or regulations. For a detailed list of the required contract clauses, please review the PDAT Contract Provisions Template which can be found here.

8. Awarding a Prohibited "Cost-plus-percentage-of-cost" or "Percentage-of-construction-cost" Contract

These are contracts where the contractor's profit is based on a percentage of the underlying project costs actually incurred. Such contracts are explicitly prohibited by the federal procurement standards and ineligible for FEMA grant funding because they incentivize the contractor to increase their actual cost to increase the associated profit. Non-state entities should work closely with their attorneys and procurement staff to read contracts carefully to ensure these types of provisions are not included in a contract, as they can be difficult to identify.

9. Awarding a Contract to Contractors that Were Suspended or Debarred

Any contractors that have been suspended or debarred by a federal agency cannot receive a federal award or contract. (See 2 C.F.R. pt. 3000). Prior to entering into a contract, the non-state entity should go to the System of Award Management website at sam.gov to check if their anticipated contractor has been suspended or debarred. If they have, per federal regulation, they are not eligible to receive payment under a contract supported by a federal award.

10. Not Properly Documenting All Steps of a Procurement

A non-state entity must maintain sufficiently detailed records that document the procurement history. These records must include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor

selection or rejection, and the basis for the contract price. The procurement documentation file should also contain:

- Purchase request, acquisition planning information, and other pre-solicitation documents;
- List of sources solicited;
- Independent cost estimate;
- Statement of work/scope of services;
- Copies of published notices of proposed contract action;
- Copy of the solicitation, all addenda, and all amendments;
- An abstract of each offer or quote;
- Determination of contractor's responsiveness and responsibility;
- Cost or pricing data;
- Determination that price is fair and reasonable, including an analysis of the cost and price data;
- Notice of award;
- Notice to unsuccessful bidders or offerors and record of any debriefing;
- Record of any protest;
- Bid, performance, payment, or other bond documents;
- Notice to proceed

Beyond the Top 10 Mistakes

Below are other items that non-state entities should be aware of:

Piggyback Contracts. Adopting a pre-existing contract solicited and awarded by another entity is referred to as "piggybacking." This practice is challenging because it is difficult to execute these agreements in compliance with the federal procurement rules. However, if a non-entity entity obtains contractual rights through assignment, it may properly use this type of contract under a grant award if it determines that:

- The original contract was procured in compliance with 2 C.F.R. §§ 200.318-200.326;
- The original contract contains appropriate assignability provisions that permit the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions;
- The contract price is fair and reasonable;
- The contract contains all the federally required contract provisions;
- The scope of work to be performed falls within the scope of work under the original contract and there are no changes to the contract that fall outside of what was reasonably considered by the parties when they entered into the contract;

- The scope of the assigned contract originally procured by the assigning party *does not exceed the amount of property and services required to meet the assigning party's original, reasonably expected needs*. The federal regulations require the recipient or subrecipient to have procurement procedures that preclude it from acquiring property or services it does not need. Therefore, a contract would have an improper original scope if the original party added excess capacity in the original procurement primarily to permit assignment of those contract rights to another entity. Moreover, an assignable contract with an overbroad scope of work may lead to unreasonable pricing and thus should not be used; and
- The quantities the assigning party acquired, coupled with the quantities the acquiring grantee or subgrantee seeks, do not exceed the amounts available under the assigning entity's contract.

Additional information and resources about non-state entity requirements under the federal procurement standards can be found at the following webpage: www.fema.gov/procurement-disaster-assistance-team.

OHIO AUDITOR OF STATE
KEITH FABER

SURVIVING & THRIVING IN A POST-COVID WORKPLACE

Slides

SURVIVING AND THRIVING IN THE "POST-COVID" WORKPLACE

Akron | Cincinnati | Dublin | Lima
1.800.282.0787
www.clemansnelson.com

© 2022 Clemans, Nelson & Associates, Inc.

Stay Interviews

- What is a Stay Interview?
  - A structured discussion a leader conducts with each individual employee to learn the specific actions needed to strengthen that employee's engagement and retention with the organization.
- Bring information that can be used today?
- Focus on individual employees including top performers
- Put managers in the solution seat
- Separate from Performance Review
- Create individual stay action plans

© 2022 Clemans, Nelson & Associates, Inc.

Stay Interviews

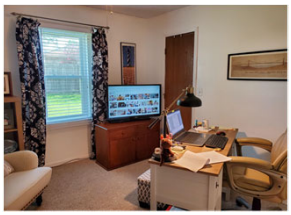
Top 5 Stay Interview Questions:

1. What do you look forward to each day when you come to work?
2. What are you learning here? Want to learn?
   - Assign mentor, offer CLE, etc.
3. Why do you stay here?
4. What could cause you to leave us?
5. What can I do to make your job better for you?

© 2022 Clemans, Nelson & Associates, Inc.

Teleworking Working

- **Does it look like this?**



© 2022 Ciemans, Nelson & Associates, Inc.

Teleworking Working

- **Or more like this?**

© 2022 Ciemans, Nelson & Associates, Inc.

Teleworking Working

Studies show that that many employees can be equally, if not more, productive when working remotely. While the feasibility of remote work varies depending on an employee's job responsibilities, expanding remote work options can offer various benefits. These benefits can include:

- Increased flexibility
- Increased retention
- Reduced greenhouse emissions
- The ability to tap into a broader talent pool
- Fewer opportunities for diseases such as coronaviruses to spread

Notably, by expanding remote opportunities post-coronavirus, employers can reduce the amount of human interaction that takes place at a physical location. Also, by allowing remote work, employees who are sick are less likely to physically attend the office.

Best practices for expanding remote work include creating outlined companywide remote practices, rather than leaving remote work approval requests up to the subjective opinion of a manager.

© 2022 Ciemans, Nelson & Associates, Inc.

Teleworking Working

Policies Consideration:

- Cyber Security Policy/Training/Instruction
- Time Keeping/Recording Policy
- Set Regular Working Hours with office hours
- Professional Attire Policy (even for working from home)
- Define who is eligible

© 2022 Clemans, Nelson & Associates, Inc.

Returning to Work

© 2022 Clemans, Nelson & Associates, Inc.

Returning to Work

- April 4 – Google requires all employees to work at least three days a week from the office
- April 11 – Apple employees will have to work from the office at least 1 day week and jump to 3 days on April 23
- March 28 – Facebook orders all employees back to work
- March 28 – Microsoft orders all employees to have hybrid work schedule set with their individual managers

© 2022 Clemans, Nelson & Associates, Inc.

Returning to Work

- Gallup poll found that
  - 37% of workers surveyed want to continue working fully from home
  - 54% prefer a hybrid model, and
  - only 9% want to return to work full time.
  - For those never worked from home but whose job can be done remotely, 48% want to give it a try.

© 2022 Clemans, Nelson & Associates, Inc.

Returning to Work

- Executive Level Communication
  - Set the tone from a cultural and leadership role
  - Reinforce priorities, worker safety, and personal responsibility
  - Set strong leadership expectations
- Employee Communication
  - Survey employees regularly
  - Set up internal small group communication teams
- Update Policies and Practices
  - Cyber security, time tracking, social media use, etc.
- Refine and train accommodation request procedure
- Focus on Results more than office hours

© 2022 Clemans, Nelson & Associates, Inc.

© 2022 Clemans, Nelson & Associates, Inc.

Addressing Mental Health Issues & COVID-19

- Acknowledge the impact of COVID-19 on mental health
- Adopt new mental health resources tailored to addressing challenges that COVID-19 poses
- For example, mental health training and awareness programs via EAP, virtual therapy, virtual wellness sessions, financial wellness, etc.
- Inform employee of all available resources

© 2022 Clemans, Nelson & Associates, Inc.

Addressing Mental Health Issues & COVID-19

- Create intentional opportunities for one-on-one check-ins with employees to empower them to speak up
- Reduce everyday anxiety by asking employees about their home life, loved ones, pets etc.
- Create an optional virtual meeting for your employees – OFFICE HOURS - with no order of business but to share feelings or concerns
- Be transparent and human

© 2022 Clemans, Nelson & Associates, Inc.

Mental Health and Risk Management

- Failure to address mental health issues can result in
  - **Increased administrative costs**—discipline, internal investigations, citizen complaints, grievance & arbitration process, increased leave use
  - **Increased legal costs**—citizen claims, employment discrimination claims, unemployment

© 2022 Clemans, Nelson & Associates, Inc.

Mental Health Example

COVID-19 PTSD

Organizational Impacts

- Early retirement
- Absenteeism
- Sick leave & workers comp
- Estimated productivity loss: **$4,000/each employee affected**
  - Difficulty managing time
  - Difficulty performing physical tasks
  - Difficulty interacting with people
  - Difficulty completing tasks

© 2020 Clemans, Nelson & Associates, Inc.

Diversity & Inclusion Initiatives

- Diversity
  - Refers to the range of human differences
  - Encompasses acceptance and respect
  - Understanding that each person is unique
  - Demands that there are necessary dimensions of race, age, ethnicity, gender, sexual orientation, physical abilities, religious beliefs, socio-economic status
  - Communities benefit when there is a successful collaboration of individuals with unique perspectives
- Inclusion
  - Fostering an environment in which individuals are **valued** for their differences
  - Understanding that what makes a person unique is a strength – not a barrier or a division

© 2022 Clemans, Nelson & Associates, Inc.

Diversity & Inclusion Initiatives

- Pros
  - Gender-diverse organizations are 15% more likely to outperform their peers*
  - Ethnically-diverse agencies are 35% more likely to outperform their peers*
  - Employees are more likely to feel satisfied in an environment that nurtures diversity and inclusion
    - Enables higher retention
    - Mitigates attrition

* Source: https://www.civicplus.com/blog/hr/how-government-hr-can-create-a-diversity-and-inclusion-program-part-1-why-its-needed

© 2022 Clemans, Nelson & Associates, Inc.

Turnover, Compensation & Retention

- "The turnover tsunami has started……" – Drew Esposito, 2022 CAAO
- Given the labor market challenges, employers may have to pay higher wages ad hoc to make up for shortcomings in their compensation structure.
- For instance, employers may need to pay for competitive and critical jobs at the 60th percentile instead of at the median.
- Ensure that your market intelligence is current and that how you price jobs is appropriate for this environment. Employers need more real-time information rather than year-old information.
- For those in lower-paid jobs, a 10 percent or 20 percent pay increase can change a worker's standard of living significantly for the better. But employer-provided benefits can be just as important. The pandemic, for instance, caused many employees to realize the importance of reliable child care. Employers that provide child care support could have an edge when it comes to recruiting employees.

© 2022 Clemans, Nelson & Associates, Inc.

Turnover, Compensation & Retention

Competitive Compensation Packages	52%
Emphasis on Work-life Balance	38%
Advancement Opportunities	31%
Collaborative Environment	29%
Training/Continued Education	27%
The Organization's Ethics	27%
Work from Home Options	25%
Ease of Commute	21%
Fun Company Culture	17%
Access to Emerging Tech	16%
Sense of Camaraderie	10%
Other	3%

Source: Recruiter Sentiment Study

© 2022 Clemans, Nelson & Associates, Inc.

What do we offer?

- Longevity
- Public Pension Programs
- Civil service protections
- Job Stability
- Public Sector Loan Forgiveness
- Other Benefits
- Wages?

© 2022 Clemans, Nelson & Associates, Inc.

Hire the right person

- The True Cost of a Bad Hire
  - Salary
  - Days to Fill
  - Reviewing Resumes
  - Conducting Interviews
  - Advertising Costs
  - Drug Screen/Background Check
  - Lost Productivity
  - Training

© 2022 Clemans, Nelson & Associates, Inc.

Hire the right person

- Look for the Appropriate Skill Set
- Good Fit/Culture!
- Think Down the Road
- Probationary Removals – No good deed goes unpunished

© 2022 Clemans, Nelson & Associates, Inc.

Little Things with a Big Impact

- Smile
- Create a friendly environment
- Bring food
- Office holiday celebrations
- Recognize birthdays

Questions?

Akron | Cincinnati | Dublin | Lima
www.clemansnelson.com
1.800.282.0787

© 2022 Clemans, Nelson & Associates, Inc.

OHIO AUDITOR OF STATE
KEITH FABER

INVESTMENT UPDATE & CURRENT TRENDS

Slides

INVESTMENT UPDATE & CURRENT TRENDS

PRESENTED BY
EILEEN STANIC, CTP®, SR. PUBLIC FUNDS ADVISOR
SCOTT GRUBER, CMT, CLIENT PORTFOLIO MANAGER

MEEDER PUBLIC FUNDS

Today's Presenters

MEEDER

Eileen Stanic, CTP®
Sr. Public Funds Advisor
440.662.8268
estanic@meederinvestment.com

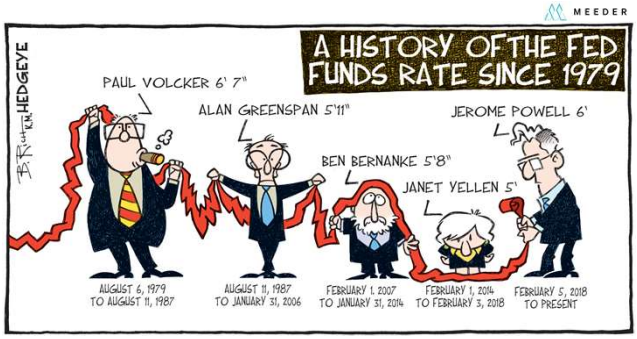
Scott Gruber, CMT
Client Portfolio Manager
614.760.2156
sgruber@meederinvestment.com

2

MEEDER PUBLIC FUNDS

Investment Update

MEEDER

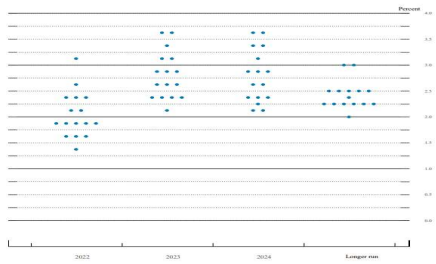


4

Federal Reserve Outlook

Monetary policy on the path to normalization

MEEDER



- Effective 3/16/2022, the FOMC raised short-term rates by 0.25% to a range of 0.25%-0.50% citing elevated inflation and strong job gains
- Current geopolitical events are expected to weigh on economic activity and increase inflation pressures
- Disparity amongst officials highlights uncertainty surrounding pace of future rate hikes
- Committee expects to begin reducing its $9 trillion balance sheet at a "coming meeting"

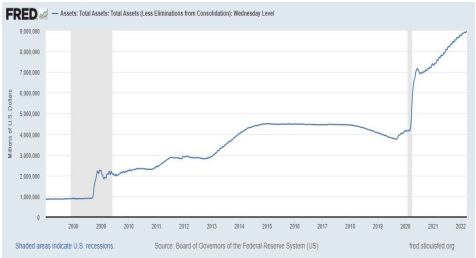
SOURCE: FEDERAL RESERVE PRESS RELEASE AND SUMMARY OF ECONOMIC PROJECTIONS AS OF 3/16/2022

5 FOR INFORMATIONAL PURPOSES ONLY. SEE IMPORTANT DISCLOSURES AT THE END OF THE PRESENTATION.

Quantitative Easing

Fed's Balance Sheet

MEEDER



- Balance sheet expansion used during times of crisis to provide liquidity to the marketplace and to temper longer term interest rates
- Fed's balance sheet grew by over $4.5 trillion since February 2020
- Fed poised to commence shrinking the balance sheet at a "coming meeting"

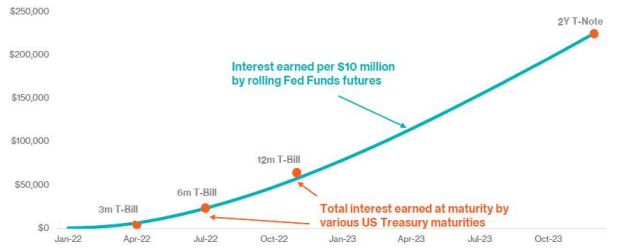
SOURCE: FRED, FEDERAL RESERVE BANK OF ST. LOUIS 3/30/2022

6 FOR INFORMATIONAL PURPOSES ONLY. SEE IMPORTANT DISCLOSURES AT THE END OF THE PRESENTATION.

What's Priced in Now

Treasuries fully pricing in 7 rate hikes

MEEDER



SOURCE: BLOOMBERG AS OF 2/1/2022

7 FOR INFORMATIONAL PURPOSES ONLY. SEE IMPORTANT DISCLOSURES AT THE END OF THE PRESENTATION.

Federal Reserve Mandates

Federal Reserve Reform Act of 1977 and Full Employment and Balanced Growth Act of 1978

MEEDER

MANDATES

- FULL EMPLOYMENT
- STABLE PRICES
- MODERATE LONG TERM INTEREST RATES

8 FOR INFORMATIONAL PURPOSES ONLY. SEE IMPORTANT DISCLOSURES AT THE END OF THE PRESENTATION.

Supply Chain Disruptions

Continue to contribute to inflation

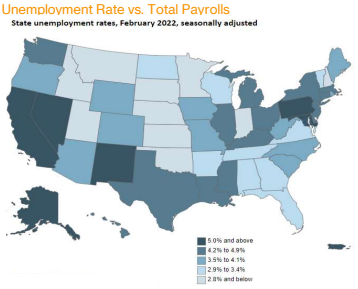
MEEDER

Source: Long Beach Press-Telegram via Getty Images

9 FOR INFORMATIONAL PURPOSES ONLY. SEE IMPORTANT DISCLOSURES AT THE END OF THE PRESENTATION.

Mixed Employment Data Persists

Unemployment Rate vs. Total Payrolls



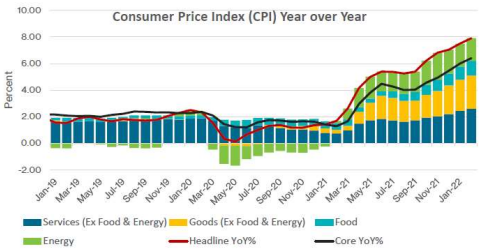
- March unemployment rate stands at 3.6%, in line with the Fed's target for "full employment."
- Total nonfarm payroll employment rose by 431,000 in March, compared to a median forecast of 490,000.
- Nonfarm employment still down over 1.6 million from its pre-pandemic level in February 2020
- Labor participation rate improved slightly to 62.4%, while average hourly earnings are up 5.6% annually.

SOURCE: BUREAU OF LABOR STATISTICS 3/30/2022

10 FOR INFORMATIONAL PURPOSES ONLY. SEE IMPORTANT DISCLOSURES AT THE END OF THE PRESENTATION.

Inflation Not Abating

FED Chair Retires use of Transitory



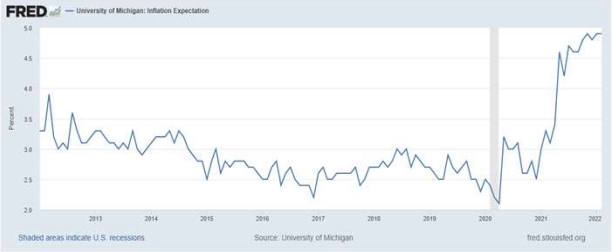
- February PCE inflation measure registered 6.4% increase year over year, 5.4% excluding volatile food and energy
- Increased prices on durable goods have far exceeded increased prices on services
- Fed view shifts to persistent inflation from transitory

SOURCE: BLOOMBERG 3/31/2022

11 FOR INFORMATIONAL PURPOSES ONLY. SEE IMPORTANT DISCLOSURES AT THE END OF THE PRESENTATION.

Inflation Expectations

Consumers Expect Inflation to Remain Persistent

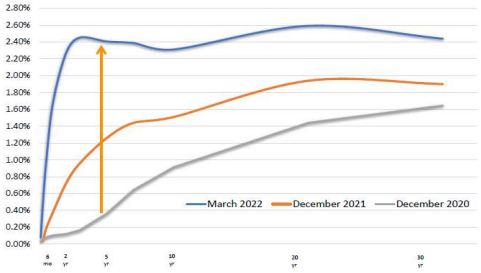


Source: Surveys of Consumers, University of Michigan, University of Michigan: Inflation Expectation® [MICH], retrieved from FRED, Federal Reserve Bank of St. Louis https://fred.stlouisfed.org/series/MICH/, (Accessed on 3/30/2022)

12 FOR INFORMATIONAL PURPOSES ONLY. SEE IMPORTANT DISCLOSURES AT THE END OF THE PRESENTATION.

US Treasury Yield Curves

MEEDER



- Yield curve has steepened with improved economic conditions
- Probability for faster pace of Fed rate hikes has increased
- Discussions on yield curve inversion starting to set in as 2 year and 10 year spreads narrowing

Source: Bloomberg AS OF 3/31/2022

FOR INFORMATIONAL PURPOSES ONLY. SEE IMPORTANT DISCLOSURES AT THE END OF THE PRESENTATION.

2022 Risks

MEEDER

- Further War Escalation
- Commodity Price Inflation
- European Recession
- Fiscal Cliff
- FED Slows Down Pace of Rate Increases
- China Zero Covid Strategy – Major Manufacturing Cities Under Lockdown Again
- New Covid Variants or Fall/Winter Seasonal Outbreaks

FOR INFORMATIONAL PURPOSES ONLY. SEE IMPORTANT DISCLOSURES AT THE END OF THE PRESENTATION.

MEEDER
PUBLIC FUNDS

Current Trends

Investment objectives and goals

MEEDER

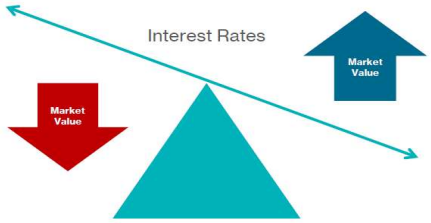
LEGAL	Legal may not be suitable
SAFETY	Preservation of principal
LIQUIDITY	What are your liquidity needs?
YIELD	Does the investment have a competitive yield?

17

Market Values

Inverse Relationship

MEEDER



18

Example – Single Security

MEEDER

5 YEAR MATURITY
PAR VALUE $760,000
COST BASIS $748,243
YIELD TO MATURITY 2.08%

For illustrative purposes only.

19

Example – Single Security

MEEDER

5 YEAR MATURITY
PAR VALUE $760,000
COST BASIS $748,243
YIELD TO MATURITY 2.08%

	COST BASIS	MARKET VALUE	UNREALIZED GAIN/LOSS
YEAR END 1	$748,243	$749,406	$1,163
YEAR END 2	$748,243	$744,678	($3,565)
YEAR END 3	$748,243	$762,348	$14,105
YEAR END 4	$748,243	$771,225	$22,982
YEAR END 5	$748,243	$760,000	$11,757

For illustrative purposes only.

20

Portfolio Right-Sizing

MEEDER

CASH

LIQUIDITY RESERVE

CORE INVESTMENT PORTFOLIO

22

Cash Flow Analysis

MEEDER

CURRENT EXPENSES

EXCESS CASH

23

Cash Allocation

MEEDER

CURRENT	RIGHT-SIZED
CASH $5 million	CASH $1 million
LIQUIDITY RESERVE $11 million • Earning 0.30%	LIQUIDITY RESERVE $3 million • Earning 0.30%
CORE $4 million • Earning 2.00%	CORE $16 million • Earning 2.00%

PROJECTED ADDITIONAL INTEREST INCOME OF $216,000

For illustrative purposes only.

24

Using Commercial Paper in your Portfolio

MEEDER

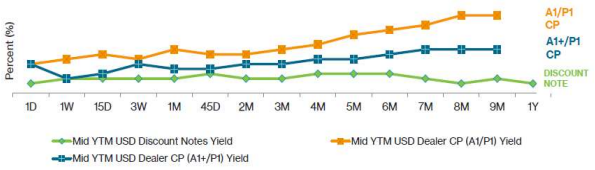
Asset-Liability Method	Liquidity Percentage Method
• Short-Term Cash Flow Management	• To provide liquidity for daily operations
"Laddered" or "barbell" portfolio	May be used for diversification in your "core" investment portfolio to balance longer maturities

25

Yield Spreads

MEEDER

- Always evaluate Yields to determine quality of asset type versus risk premium being placed
- Liquidity can play a role in certain assets offering higher yields across different environments and scenarios



SOURCE: BLOOMBERG. YIELD SPREADS SHOWN ARE FOR ILLUSTRATIVE PURPOSES ONLY.

26

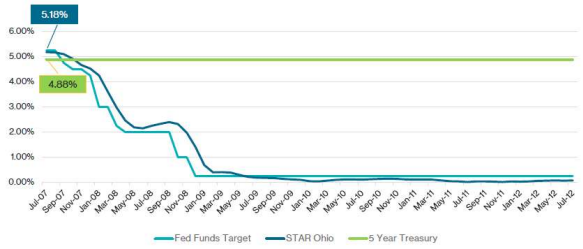
MEEDER

IF INTEREST RATES ARE RISING, WHY WOULD I WANT TO INVEST IN LONG MATURITIES NOW?

27

July 2007

MEEDER



5 year Treasury: 4.88% vs STAR Ohio 5 year average: 1.08%

SOURCE: BLOOMBERG AND TOS.OHIO.GOV/STAR-OHIO

For illustrative purposes only.

28

Investing in Bonds

MEEDER

Par	Discount	Premium
Price = $100	Price < $100	Price > $100
Coupon at Market	Coupon Below Market	Coupon Above Market
SAME YIELD TO MATURITY		
DIFFERENT TIMING OF CASH FLOWS		

For illustrative purposes only.

29

Impact on Interest Received

MEEDER

2 YEAR MATURITY
PAR VALUE $500,000

COUPON RATE	2.00%		1.50%		2.50%	
PURCHASE PRICE	Par Price = $100		Discount Price < $100		Premium Price > $100	
Cash Flows	Amount	Cumulative	Amount	Cumulative	Amount	Cumulative
Coupon 1	$5,000	$5,000	$3,750	$3,750	$6,250	$6,250
Coupon 2	$5,000	$10,000	$3,750	$7,500	$6,250	$12,500
Coupon 3	$5,000	$15,000	$3,750	$11,250	$6,250	$18,750
Coupon 4	$5,000	**$20,000**	$3,750	$15,000	$6,250	$25,000
Discount/Premium	n/a		$5,000	**$20,000**	($5,000)	**$20,000**

For illustrative purposes only.

30

Safekeeping Options

MEEDER

Third-Party Custodian

- Securities held in public entity's account at bank trust department
- Public entity controls account
- Securities held in public entity's name
- Written custodial agreement
- **GFOA best practice**

Broker or Bank acting as Broker

- Securities held in brokerage account
- Broker controls account
- Securities not held in public entity's name
- Safekeeping cost bundled with other services

31

Interest Rate Outlook

MEEDER

UNCERTAIN	RISING RATES	FALLING RATES
• Maintain average maturity • Diversification across security types	• Reduce average maturity • Frequent short-term maturities	• Lengthen average maturity • Lock-in current rates with longer maturities

THE MARKETS CHANGE AND YOUR INVESTMENT STRATEGY SHOULD TOO

For illustrative purposes only.

32

MEEDER

- "The time is always right to do what is right."
  - – Dr. Martin Luther King, Jr.
- "Experience is the best teacher."
  - – Latin Proverb

34

Disclosure

MEEDER

Meeder Public Funds, a subsidiary of Meeder Investment Management, is a registered investment advisers with the Securities and Exchange Commission (SEC) under the Investment Advisers Act of 1940. The opinions expressed in this presentation are those of Meeder Investment Management. The material presented has been derived from sources considered to be reliable, but the accuracy and completeness cannot be guaranteed.

Any rates and yields shown are for illustrative purposes only. Any securities shown are for illustrative purposes only and should not be assumed to be eligible investments for your entity. You should review any investment's eligibility based on Ohio Revised Code and your entity's investment policy.

Past performance does not guarantee future results. Opinions and forecasts are all subject to change at any time, based on market and other conditions, and should not be construed as a recommendation of any specific security. Investing in securities involves inherent risks, including the risk that you can lose the value of your investment. There is no assurance that the investment process will consistently lead to successful results. The investment return and principal value of an investment will fluctuate so an investor's shares or units, when redeemed, may be worth more or less than their original cost.

Meeder Investment Management
6125 Memorial Drive
Dublin, OH 43017
866.633.3371
MeederInvestment.com

35

MEEDER
PUBLIC FUNDS

MeederInvestment.com

OHIO AUDITOR OF STATE
KEITH FABER

INFRASTRUCTURE BILL & DEBT FINANCING

Slides

SQUIRE PATTON BOGGS

Infrastructure Bill & Debt Financing

Presenters

SQUIRE PATTON BOGGS

Ryan Callender
Partner
T +1 216 479 8395
E ryan.callender@squirepb.com

Heather Baldwin Vlasuk
Senior Attorney
T +1 216 479 8723
E heather.vlasuk@squirepb.com

Natalie Vicchio
Associate
T +1 216 479 8429
E natalie.vicchio@squirepb.com

SQUIRE PATTON BOGGS

COVID-RELATED STIMULUS BILLS SUMMARY

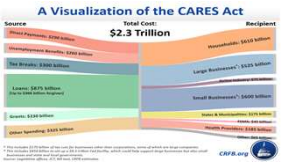
1. Coronavirus Aid, Relief & Economic Security Act (CARES)
2. Coronavirus Response & Relief Supplemental Appropriations Act (CRRSAA)
3. American Rescue Plan Act (ARPA)

Coronavirus Aid, Relief & Economic Security Act (CARES) – **March 2020**

SQUIRE PATTON BOGGS

- $2.3T stimulus (relief?) package
  - Largest emergency response bill in US history
  - Funds mostly tapped out at this point
  - Quite restrictive in what programming/projects funding may be used for
    - i.e. almost all COVID-relief related

H. R. 748



One Hundred Sixteenth Congress
of the
United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Friday, the third day of January, two thousand and twenty

An Act

To amend the Internal Revenue Code of 1986 to repeal the excise tax on high cost employer-sponsored health coverage.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Coronavirus Aid, Relief, and Economic Security Act" or the "CARES Act".

Coronavirus Response & Relief Supplemental Appropriations Act (CRRSAA) – **December 2020**

SQUIRE PATTON BOGGS

- $908B package
- Mainly an expansion & extension of CARES provisions
- Still fairly rigid & restrictive regarding what funds may be used for

H. R. 133

One Hundred Sixteenth Congress
of the
United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Friday, the third day of January, two thousand and twenty

An Act

Making consolidated appropriations for the fiscal year ending September 30, 2021, providing coronavirus emergency response and relief, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Consolidated Appropriations Act, 2021".

American Rescue Plan Act (ARPA) – **March 2021**

SQUIRE PATTON BOGGS

- $1.9T
  - Distributed in two equal tranches (May 2021 & approx. May 2022) to local gov'ts
  - Distributed in bulk sum to states
- Expansion of CRRSAA
  - Extended many CRRSAA provisions through Sept. 2021
- Unlike CRRSAA, provides significant direct and **flexible** state & local aid

H. R. 1319

One Hundred Seventeenth Congress
of the
United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Sunday, the third day of January, two thousand and twenty-one

An Act

To provide for reconciliation pursuant to title II of S. Con. Res. 5.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "American Rescue Plan Act of 2021".

SQUIRE PATTON BOGGS

CARES, CRRSAA & ARPA Funding to Local Governments

squirepattonboggs.com

Local Governments

SQUIRE PATTON BOGGS

- **CARES** - $150B- **Coronavirus Relief Fund** (CRF)
  - States & localities
    - Localities w/ more than 500,000 people **ONLY**
  - Eligible local gov'ts apply directly to USDT
  - Cover costs that were:
    - "**necessary expenditures** incurred due to the public health emergency with respect to COVID-19"
    - "incurred during the period from March 1, 2020 to December 31, 2020"
- **CRRSAA**
  - CARES funding to localities set to expire Dec. 31, 2020 & CRRSAA passed Dec. 27, 2020
    - Extend deadline to use monies from CRF to Dec. 31, 2021
      - **No** additional flexibility for utilization (e.g. revenue loss)
  - States & localities
    - Localities w/ more than 200,000 people **ONLY**
  - Not a ton of new resources for state and local gov'ts
    - Housing & Rental Assistance Program

State of Ohio- $3.8B
Columbus (city)- $156M
Cuyahoga- $216M
Franklin- $76.3M
Hamilton- $142.6M
Montgomery- $93M
Summit- $94.4M

squirepattonboggs.com 8

Local Governments

SQUIRE PATTON BOGGS

- **ARPA** - $350B- **Coronavirus State & Local Fiscal Recovery Funds (SLFRF)**
  - Every single locality size eligible for funding
  - Local gov't receive funding in two equal tranches (at lease one year apart)
    - "reduce public sector lost revenue"
    - "…[m]ake **necessary investments** in water, sewer, or broadband infrastructure."
  - State of OH – (formula based on unemployment statistics) - $5.4B
  - OH County Awards – (formula based on county's pop. share of the total pop. of all counties)
    - Cuyahoga County - $239.9M
    - Franklin County - $255.8M
    - Vinton County (least populated in OH) - $2.5M
  - OH Metrocity Awards (formula based on poverty, population, housing overcrowding & age of housing)
    - Cleveland - $511.7M
    - Columbus - $187M

squirepattonboggs.com 9

SLFRF Final Rule

SQUIRE PATTON BOGGS

- "necessary investments" – who is she?
- Published **Jan. 6, 2022 –** effective **April 1, 2022**
- Still flexible, just more explicit guidance
- Expanded eligible use areas:
  - Public Health & Economic Impacts
  - Replacing Lost Public Sector Revenue
  - Water, Sewer and Broadband Infrastructure
  - Premium Pay to Eligible Workers
  - Payments to Non-Entitlement Units (NEUs)

FUNDS MUST BE OBLIGATED BY DEC. 31, 2024 W/ PERIOD OF PERFORMANCE RUNNING UNTIL DEC. 31, 2026

SLFRF Final Rule

SQUIRE PATTON BOGGS

- Address public health and economic impacts of the pandemic
  - Expanded list of eligible uses
    - E.g. affordable housing development, public benefits assistance, rehiring public sector workers…
    - Organized by type of beneficiary → impacted classes / disproportionately impacted classes
      - Based on Fed. Gov't's presumption that some communities are impacted by COVID-19 more than others
    - Still non-exhaustive though

U.S. DEPARTMENT OF THE TREASURY

Step	1. Identify COVID-19 public health or economic impact	2. Design a response that addresses or responds to the impact
Analysis	• Can identify impact to a specific household, business or nonprofit or to a class of households, businesses, or nonprofits (i.e., group) • Can also identify disproportionate impacts, or more severe impacts, to a specific beneficiary or to a class	• Types of responses can include a program, service, or capital expenditure • Response should be related and reasonably proportional to the harm • Response should also be reasonably designed to benefit impacted individual or class
Simplifying Presumptions	• Final Rule presumes certain populations and classes are impacted and disproportionately impacted	• Final Rule provides non-exhaustive list of enumerated eligible uses that respond to pandemic impacts and disproportionate impacts

Source: Treasury's Overview of Final Rule

SLFRF Final Rule

SQUIRE PATTON BOGGS

- Calculating revenue lost due to the pandemic…
  - Adds additional method to determine if gov't service eligible for SLFRF moneys
    - Elect a "standard allowance" up to $10M to spend on the service
  - Still may use a formula provided by the US Dept. of Treasury
  - "gov't service" = services traditionally provided by the gov't
    - School & hospital construction, road maintenance, environmental remediation, general gov't admin, public safety services…
- Water, Sewer & Broadband (oh my)
  - Access to clean drinking water
    - EPA's Clean Water State Revolving Fund
    - Drinking Water State Revolving Fund
  - Wastewater & storm water infrastructure
    - Storm and sanitary separation projects
  - Affordable access to high-speed broadband internet

SLFRF Final Rule

SQUIRE PATTON BOGGS

- Premium Pay for Eligible Workers
  - Pay cannot exceed $25k per single worker
- Payments to NEUs
  - "Non-entitlement units" = local gov'ts serving populations under 50,000
  - Receive SLFRF funds from state gov't
  - Total SLFRF distribution **cannot** exceed 75% of NEU's most recent fiscal budget
    - Final rule: "most recent fiscal budget" = includes operating & capital expenditures in effect as of Jan. 27, 2020
      - For NEUs w/o formal budget, they can self-certify its most recent annual expenditures as of that date
    - NO additional requirements/limitations imposed by NEU on the funds

squirepattonboggs.com 13

SLFRF Final Rule

SQUIRE PATTON BOGGS

- Relevant Blanket Restriction on Use of SLFRF Funds
  - **No payments of debt service or replenishment of rainy day funds**

squirepattonboggs.com 14

SQUIRE PATTON BOGGS

INFRASTRUCTURE INVESTMENT AND JOBS ACT

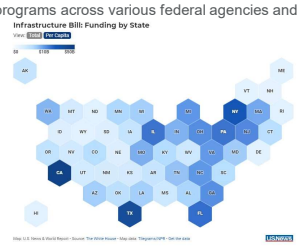
November 15, 2021

squirepattonboggs.com

Bipartisan Infrastructure Deal

SQUIRE PATTON BOGGS

- Largest ever investments in broadband, rail and transit, clean energy, water, and more
  - **$1.2T**
- Allocates funding to over 350 programs across various federal agencies and departments
- Formula based & competitive
- Ohio to receive $12.83B



Infrastructure Investment & Jobs Act - **Transportation**

SQUIRE PATTON BOGGS

- $400 billion over five years
  - **Roads & Bridges** –
    - OH to receive $9.2B for roads and highways
    - $40B for funding repair and replacement of national bridges
      - $483M to OH bridges
    - Competitive grant fund opportunities totaling more than **$33B**
  - **Passenger & Freight Rail**
    - $8B to Infrastructure for Rebuilding America (INFRA) Program
      - Support freight & highway projects of regional and national significance
    - $7.5B to Rebuilding American Infrastructure Sustainably and Equitably (RAISE) grants
      - Competitive program / formerly BUILD and TIGER
      - Support road, rail, transit & other surface transportation of local and regional significance
    - $5B to National Infrastructure Project Assistance ("Megaprojects")
      - Competitive grant program to support multi-jurisdictional or regional projects across multiple modes of transportation

Infrastructure Investment & Jobs Act - **Transportation**

SQUIRE PATTON BOGGS

- 5-year reauthorization of **Federal Highway Administration** at the Dept. of Transportation
  - $273B in federal-aid highway formula funding
    - $52.5B to be distributed to States in FY2022 - OH receiving $1.78B across the various programs
- **Public Transportation -** $91B to repair and modernize transit
  - Competitive & formula grants
  - $8B to Federal Transit Administration Capital Investment Grants – support new and expanded high-capacity rail & bus service
    - Small Starts program for projects w/ capital costs less than $400M
      - Central Ohio Transit Authority (COTA) received two of these grants for projects in Columbus
  - $5.6B to Low or No Emission (Bus) Grants – purchase zero-emission or low-emission buses
- **Airports -** $25B to for repairs, reduction in congestion & emissions, and to modernize
  - Discretionary, competitive & formula grants
  - Airport Infrastructure Grant Program - $15B
    - More than 25 OH airports receiving grants – smaller receiving $100-300k / larger airports $9-12M

Infrastructure Investment & Jobs Act - **Climate, Energy & the Environment**

SQUIRE PATTON BOGGS

- **Clean Energy**
  - Largest investment in US history –
    - Delivering clean power -$21.3B
    - Clean energy demonstrations - $21.5B
    - Energy efficiency & weatherization of buildings - $6.5B
    - Clean energy manufacturing & workforce development - $8.6B
  - Competitive & formula grants
  - Building a Better Grid Initiative – goal to 100% clean electricity by 2035 and zero-emission economy by 2050
- **Water - $55B - $242M** to OH for FY2022
  - Largest investment in drinking water, wastewater, water reuse, conveyance & water storage in US history
  - Replace lead service lines & dangerous chemicals
  - Drinking Water & Clean Water State Revolving Funds - $23B
    - Loans and grants for water infrastructure improvements to protect public health and environment
    - $45M to OH – FY 2022
- **Resilience - $50B**
  - Largest resilience investment in US history
  - Protect against droughts, heat, floods, & wildfires

squirepattonboggs.com 19

Infrastructure Investment & Jobs Act - **Climate, Energy & the Environment**

SQUIRE PATTON BOGGS

- **Environmental Remediation - $21B**
  - Abandoned mine land remediation - $11.3B
  - Orphan oil & gas well plugging, remediation & restoration - $4.7B
  - Superfund site cleanup - $3.5

squirepattonboggs.com 20

Infrastructure Investment & Jobs Act - **Broadband**

SQUIRE PATTON BOGGS

- **$65B** to ensure access to reliable high-speed internet & close the digital divide
  - Major programs include:
    - Broadband Equity, Access, and Deployment Program - $42.45B
      - National Telecommunications and Information Administration at Dept. of Commerce seeking comment on this program (among others)
      - Formula-based
      - For broadband planning & deployment, data collection and mapping, broadband adoption, reduce costs of Wi-Fi to multifamily housing units
    - Affordable Connectivity Program - $14.2B
      - Subsidizes (up to $75/month) internet service plans for low-income households
    - Broadband ReConnect Program - $2B
      - Loans and grants to construct, improve or acquire facilities for broadband services in rural areas

squirepattonboggs.com 21

SQUIRE PATTON BOGGS

DEBT FINANCING
Debt Limitations
and
Financing Structures

General Obligations - Debt Limitations

SQUIRE PATTON BOGGS

- Direct Debt Limits
  - Basics
    - Based on Assessed Valuation
    - Apply to "Net Indebtedness" (exceptions exist)
    - Different subdivisions have their own limitations
  - Exemptions
    - "Self-supporting"
    - Municipal – Income Tax Covenant
    - Utility revenue
    - County – County jails
    - Township – Fire protection

Debt Limitations

SQUIRE PATTON BOGGS

- Indirect Debt Limit
  - Article XII, Section 11
    - "No bonded indebtedness of the state, or any political subdivision thereof, shall be incurred or renewed unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation in amounts sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity."

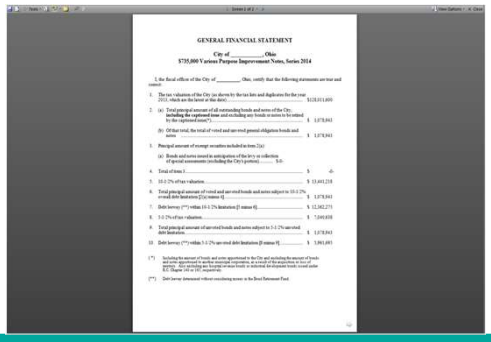
Debt Limitations

SQUIRE PATTON BOGGS

- Indirect Debt Limit
  - Article XII, Section 2
    - "No property, taxed according to value, shall be so taxed in excess of 1% of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation either when approved by at least a majority of the electors of the taxing district voting on that proposition, or when provided for by the charter of a municipal corporation."

General Financial Statement

SQUIRE PATTON BOGGS



GENERAL FINANCIAL STATEMENT

City of _____, Ohio

$735,000 Various Purpose Improvement Notes, Series 2014

I, the fiscal officer of the City of _____, Ohio, certify that the following statements are true and correct:

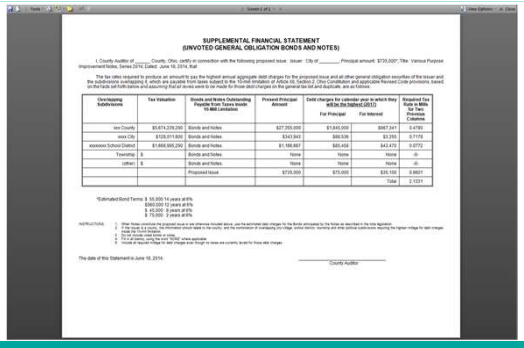
1. The tax valuation of the City (as shown by the tax lists and duplicates for the year 2012, which are the latest at this date) $128,011,600
2. (a) Total principal amount of all outstanding bonds and notes of the City, including the proposed issue and excluding any bonds or notes to be retired by the proceeds thereof ..... $ 1,078,841
   (b) Of that total, the total of voted and unvoted general obligation bonds and notes ..... $ 1,078,841
3. Principal amount of revenue securities included in item 2(a):
   (a) Bonds and notes issued in anticipation of the levy or collection of special assessments (including the City's portion) ..... $-0-
4. Total of item 3 ..... $ -0-
5. 10-1/2% of tax valuation ..... $ 13,412,218
6. Total principal amount of voted and unvoted bonds and notes subject to 10-1/2% overall debt limitation [2(a) minus 4] ..... $ 1,078,841
7. Debt leeway (**) within 10-1/2% limitation [7 minus 6] ..... $ 12,362,273
8. 5-1/2% of tax valuation ..... $ 7,040,608
9. Total principal amount of unvoted bonds and notes subject to 5-1/2% unvoted debt limitation ..... $ 1,078,841
10. Debt leeway (**) within 5-1/2% unvoted debt limitation [9 minus 9] ..... $ 5,961,693

(*) Including the amount of bonds and notes apportioned to the City and excluding the amount of bonds and notes apportioned to other taxing districts, as a result of the annexation to or creation of territory, that are subject to voted debt limitations or unlimited tax deposits bonds issued under R.C. Chapter 140 or 519, respectively.

(**) Debt leeway determined without considering money in the Bond Retirement Fund.

Supplemental Financial Statement

SQUIRE PATTON BOGGS



SUPPLEMENTAL FINANCIAL STATEMENT
(UNVOTED GENERAL OBLIGATION BONDS AND NOTES)

I, County Auditor of _____ County, Ohio, certify in connection with the following proposed issue: Issuer: City of _____, Principal amount: $735,000*; Title: Various Purpose Improvement Notes, Series 2014; Dated: June 10, 2014; that:

The tax rates required to produce an amount to pay the highest annual aggregate debt charges for the proposed issue and all other general obligation securities of the issuer and the subdivisions overlapping it, which are payable from taxes subject to the 10-mill limitation of Article XII, Section 2 Ohio Constitution and applicable Revised Code provisions, based on the facts set forth below and assuming that all levies were to be made for those debt charges on the general tax list and duplicate, are as follows:

Overlapping Subdivisions	Tax Valuation	Bonds and Notes Outstanding Payable from Taxes Inside 10-Mill Limitation	Present Principal Amount	Debt charges for calendar year in which they will be the highest (2017)		Required Tax Rate in Mills for Two Previous Columns
				For Principal	For Interest	
xxx County	$5,674,239,290	Bonds and Notes	$27,355,000	$1,640,000	$867,341	0.4790
xxx City	$128,011,600	Bonds and Notes	$243,842	$88,538	$2,355	0.7179
xxxxxxxx School District	$1,668,955,290	Bonds and Notes	$1,188,667	$85,458	$43,475	0.0772
Township	$	Bonds and Notes	None	None	None	-0-
(other)	$	Bonds and Notes	None	None	None	-0-
		Proposed Issue	$735,000	$75,000	$35,100	0.0601
					Total	2.1321

*Estimated Bond Terms: $ 55,000 14 years at 6%
$360,000 10 years at 6%
$ 75,000 5 years at 6%
$ 75,000 2 years at 6%

INSTRUCTIONS:
1. When Notes constitute the proposed issue or are otherwise included above, use the estimated debt charges for the Bonds anticipated by the Notes as described in the note legislation.
2. If the issue is a county, the information should relate to the county, and the combination of overlapping city-village, school district, township and other political subdivisions requiring the highest millage for debt charges.
3. Do not include voted bonds or notes.
4. Do not include "other" taxing districts where applicable.
5. Include all required millage for debt charges even though no levies are currently levied for those debt charges.

The date of this Statement is June 10, 2014.

_____
County Auditor

What is Debt?

SQUIRE PATTON BOGGS

- General Obligations
- Revenue (Special) Obligations
- Lease-Purchase Financing
- Other types of financing options

General Obligation

SQUIRE PATTON BOGGS

- A “General Obligation” security is one in which the issuer pledges its “Full Faith and Credit”
- Essentially all available monetary resources

Unlimited Tax General Obligation (UTGO) Bonds

SQUIRE PATTON BOGGS

- When bonds are issued pursuant to an electoral vote, the bonds are considered UTGO bonds
- The voter authorization allows for both the issuance of the bonds, as well as for the levying of a tax annually to make debt service payments
  - This rate is “unlimited” in nature, set annually at the required rate to make all payments
  - If assessed valuation drops, the tax rate can be increased, and is not limited by the millage estimate that appeared on the ballot (thus “unlimited” tax GO)
- Strong Security, Low Risk of Default
  - Generally the lowest interest rate that an issuer can obtain

Limited Tax General Obligation (LTGO) Bonds

SQUIRE PATTON BOGGS

- There are several provisions of the Ohio Revised Code (ORC) that allow for the issuance of LTGO bonds
- LTGO implies that a new voter authorization was not obtained
- There is no new revenue source for repayment
- Payment is made from existing taxes within the 10-mill limitation, thus "limited tax GO"

Revenue – Special Obligations

SQUIRE PATTON BOGGS

Revenue Debt

Example: Water and Sewer (Utility)

- Specific stream of payment
- May have statutory limits to amounts
- Less secure
- May have higher associated interest rates

Special Obligations

SQUIRE PATTON BOGGS

Other Special Obligations

Tax Anticipation Notes (TANs):

- Repaid by Emergency Levies
- Repaid by Current Expense Levies
- Repaid by Permanent Improvement (PI) Levies
- Repaid by Income Tax Levies

CTRNs

SQUIRE PATTON BOGGS

- Current Tax Revenue Notes (CTRNs)
  - Cash flow borrowing
  - Repayment by end of fiscal year
  - Tax-exempt vs. taxable

squirepattonboggs.com 34

Maximum Maturity of a Bond

SQUIRE PATTON BOGGS

- The maximum maturity of bonds is generally limited to the "useful life" of the asset being financed
  - Common sense - don't want to be paying for something after it's gone
- Useful life is defined in the Ohio Revised Code (ORC); for example:
  - 40 years for land and most "bricks and mortar" improvements
  - 10 years for loose furnishings and equipment
- The maximum maturity is often tied to a "weighted average" useful life of the assets financed
  - Many voted issues are for 36 or 37 years because the overall project combines buildings and furnishings
  - The maximum maturity for voted issues appears right on the ballot question that voters see, and a successful vote therefore puts an absolute limit on the maximum maturity of bonds issued pursuant to that vote

squirepattonboggs.com 35

Lease – Purchase Financing

SQUIRE PATTON BOGGS

- Lease-Purchase Financing of Equipment and Buildings
  - Subject-to-Appropriation Financing
    - Essentiality
    - Less secure
    - Lessor rating than G.O. obligations
    - Higher cost
  - Equipment Lease vs. Real Estate Lease

squirepattonboggs.com 36

Table of Contents

SQUIRE PATTON BOGGS

Methods of Sale

- Capital Markets – Negotiated Underwriter
- Capital Markets – Competitive Bid Underwriter
- Private Placement – Direct Bank Purchase

Overview

SQUIRE PATTON BOGGS

- Marketing the Bonds:
  - How does an Issuer sell its Bonds?
    - Negotiated
    - Competitive
    - Private Placement/Direct Purchase
- Documents:
  - Bond Ordinance or Resolution
  - Purchase Agreement
  - Offering Document (Official Statement or Offering Circular)
  - Continuing Disclosure Agreement
  - Bond Registrar Agreement or Trust Indenture
  - Escrow Agreement for refundings

Capital Market Transactions – Negotiated Sale

SQUIRE PATTON BOGGS

- Negotiated Sale:
  - Upon approval by the issuer, underwriter will approach investors to determine whether bonds can be sold at the proposed rates.
  - Adjustments are made to the interest rate scale until final terms are reached reflecting the supply and demand for the bonds.
  - Once terms for the sale have been reached a bond purchase agreement is signed by the issuer and underwriter (purchaser) agreeing to the final terms.

Capital Market Transactions - Competitive

SQUIRE PATTON BOGGS

- Competitive Sale:
  - In a competitive sale, the issuer solicits bids from underwriting firms to purchase its bonds.
  - Issuer determines the size and other essential characteristics of the issue prior to soliciting bids.
  - A Notice of Sale containing bid parameters and terms of the issue is distributed to underwriters.
  - Each bid takes into account both the interest rate paid to investors and the amount of compensation paid to the underwriting firm for selling the bonds.
  - Bonds are awarded to the firm or syndicate offering the lowest interest rate (highest price) bid.
  - Final terms and underwriter who will purchase the bonds are outlined in the Certificate of Award.

Private Placement/Direct Bank Purchase

SQUIRE PATTON BOGGS

- Private Placement or Direct Bank Purchase:
  - Method of sale in which the issuer sells bonds directly to a limited number of sophisticated investors or financial institutions without a public offering.
  - Must be sold to 35 or fewer investors (usually just one bank)
  - For governmental issues, bonds are typically sold to a bank or investment company
  - Financial institution may hold the securities in its investment portfolio until maturity.
  - No continuing disclosure obligations to the capital markets.

Private Placement/Direct Bank Purchase

SQUIRE PATTON BOGGS

- Private Placement or Direct Bank Purchase:
  - Bonds may also have provisions to sell or transfer the bond to another sophisticated investor.
  - Common for financings with shorter terms (weighted average maturity of approximately 10 years or less)
  - Typically no offering document, rating, CUSIP or DTC
  - Require sophisticated investor letters (aka “Big Boy Letters”)
  - Typically exempt from continuing disclosure under Rule 15c2-12

Advantages and Disadvantages - Capital Markets

SQUIRE PATTON BOGGS

- Negotiated Sale:
  - Advantages
    - Greater incentive for underwriter to engage in pre-sale marketing of the bonds to assess demand for certain structures and maturities.
    - A negotiated sale provides the greatest amount of flexibility regarding structure and timing of the sale.
  - Disadvantages
    - Negotiated sales require issuers to make a greater effort to remain informed of developments in the municipal market to ensure that bonds are priced at favorable rates and the underwriting spreads are reasonable.
    - Utilizing a municipal advisor can mitigate this risk.

Advantages and Disadvantages - Capital Markets

SQUIRE PATTON BOGGS

- Competitive Sale:
  - Advantages
    - Provides some assurances that bonds have been sold at the lowest interest rate given the current market conditions.
    - Competitive sales promote the appearance of an open, fair process.
  - Disadvantages
    - Issuer may have less flexibility in adjusting the structural features to respond to investor interest in certain maturities, call provisions or other characteristics.
    - Underwriters may build a “risk premium” into their bids to compensate for interest rate volatility and uncertainty in being able to sell the bonds at a particular interest rate.
    - Complex financings or weak or unknown credits may have difficulty attracting bids.

Advantages and Disadvantages - Private Placement/Direct Purchase

SQUIRE PATTON BOGGS

- Private Placement/Direct Bank Purchase:
  - Advantages
    - Can typically be sold without disclosure (POS/OS), ratings and continuing disclosure requirements.
    - Financing can be customized to particular needs of the issuer
  - Disadvantages
    - Limited to 10-15 years for most market participants
    - Typically higher interest rates

Borrowing - Participants

SQUIRE PATTON BOGGS

Issuer

- Approve bond legislation
- Assist with preparation of disclosure data
- Develop financing plan
- Make rating & insurance presentations (if applicable)
- Make bond payments

Municipal Advisor

- Provide financing plan assistance
- Provide rating agency & bond insurer preparation
- Provide investment advice

Bond Counsel

- Prepare bond resolution
- Provide Official Statement/disclosure preparation assistance
- Prepare various deal related legal documents
- Provide legal opinion to investors

Borrowing - Participants

SQUIRE PATTON BOGGS

Underwriter Investment Bankers

- Perform due diligence on disclosure
- Provide financing plan assistance
- Provide rating agency & bond insurer preparation
- Provide investment advice

Sales Force – Market the Bonds

Trustee / Registrar (P&I Payments

- Authenticate bonds
- Receive interest and principal payments from Issuer
- Make interest and principal payments to investors

Rating Agencies / Credit Enhancement

- Review credit worthiness of the Issuer
- Rating agencies issue bond rating
- Acceptance into State Credit Enhancement Program (if issue qualifies)

Investors

- Purchase bonds
- Receive interest and principal payments from paying agent

Presenters

SQUIRE PATTON BOGGS

Ryan Callender
Partner
T +1 216 479 8395
E ryan.callender@squirepb.com

Heather Baldwin Vlasuk
Senior Attorney
T +1 216 479 8723
E heather.vlasuk@squirepb.com

Natalie Vicchio
Associate
T +1 216 479 8429
E natalie.vicchio@squirepb.com

Global Coverage

SQUIRE PATTON BOGGS

Abu Dhabi
Atlanta
Beijing
Berlin
Birmingham
Böblingen
Bratislava
Brussels
Cincinnati
Cleveland
Columbus
Dallas
Darwin
Denver
Dubai
Frankfurt
Hong Kong
Houston
Leeds
London
Los Angeles
Madrid
Manchester
Miami
Milan
Moscow
New Jersey
New York
Palo Alto
Paris
Perth
Phoenix
Prague
Riyadh
San Francisco
Santo Domingo
Seoul
Shanghai
Singapore
Sydney
Tampa
Tokyo
Warsaw
Washington DC

Africa
Brazil
Caribbean/Central America
India
Israel
Mexico

Office locations
Regional desks and strategic alliances

squirepattonboggs.com 49

OHIO AUDITOR OF STATE
KEITH FABER

ROUND TABLE DISCUSSION FOR EXPERIENCED OFFICERS

Slides with Notes & Links

ARPA State and Local Fiscal Recovery Funds Q&A

LGOC Roundtable for Experienced Fiscal Officers
April 13, 2022

Presented by: Marnie Fredrickson, Assistant Chief Deputy Auditor, Auditor of State

Costs incurred (i.e., obligations): March 3, 2021 - December 31, 2024.
Period of Performance (i.e., liquidation): through December 31, 2026.

Reminder: Four Key Eligible Use Categories

The American Rescue Plan provides four major categories of eligible uses to tackle the broad range of public health and economic challenges caused or exacerbated by the COVID-19 emergency.

1. **Public Sector Revenues**
   - Providing government services up to the amount of revenue loss due to the pandemic
2. **Public Health & Economic Response**
   - Responding to COVID-19's public health impact, along with its economic harms
3. **Premium Pay for Essential Workers**
   - Offering additional support to workers who bear the greatest health risks because of their service in critical sectors
4. **Water, Sewer & Broadband Infrastructure**
   - Providing funding to critical water and sewer projects, along with high-speed broadband infrastructure

Recipients have requested greater flexibility, simplicity & clarity in the final rule to respond to new pandemic needs and make transformative investments

Source: U.S. Treasury January 2022 Final Rule: Coronavirus State and Local Fiscal Recovery Funds training

Evaluating Potential Uses of Local Fiscal Recovery Funds

Each eligible-use category has separate and distinct standards for assessing whether a use of funds is eligible. Standards, restrictions, or other provisions in one eligible-use category do not apply to the others.

1. First, **determine the eligible use category** for a potential use of funds.
2. Then, assess whether potential use meets the **eligibility criteria for that category**.
3. In the case of uses to respond to the **public health and negative economic impacts of the pandemic, determine a subcategory** (i.e., public health, assistance to households, assistance to small businesses, assistance to nonprofits, aid to affected industries, or public sector capacity and workforce).
4. Evaluate whether potential use meets the **eligibility standard for that subcategory**.
5. Finally, **DOCUMENT** your process, decisions, and any approvals to be presented for audit.

Efficient • Effective • Transparent 3

Access link here: https://ohioauditor.gov/resources/docs/Potential_Uses.pdf

ARPA Questions

Q1. What do you consider to be the biggest hurdles to compliance/ auditability stemming from recent federal programming (CARES, ARPA), and what suggestions do you have to help local governments to clear those hurdles?

A1. First, lack of adequate supporting documentation - Take time to document decisions and support for rationale –this is key!

- Consider documentation needed to support the fiscal and programmatic compliance, including how the expenditure is necessary to prevent, prepare for, and respond to the COVID-19 pandemic (if in the Public Health bucket) and how the cost incurred is reasonable under Uniform Guidance Cost Principles.

Access link here: https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1

ARPA Questions

Q1. What do you consider to be the biggest hurdles to compliance/ auditability stemming from recent federal programming (CARES, ARPA), and what suggestions do you have to help local governments to clear those hurdles?

A1. Second, lack of up-to-date policies or weak internal controls over compliance.

- The Uniform Guidance Act requires effective internal controls over Federal awards and specific up-to-date policies, including Federal Procurement policies, to ensure compliance.
- Be sure to check out the Top Ten Tips for Avoiding Procurement noncompliance under our COVID-19 Resources for Clients (ohioauditor.gov)

Link #1: https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1

Link #2: https://ohioauditor.gov/resources/covid19_clients.html

ARPA Questions

Q2. Would love to know if the ARPA funds can be used to purchase land or buildings to use for water purposes?

A2. Refer to Treasury's Final Rule Overview, Water & Sewer Infrastructure section. Construction of publicly owned treatment works is eligible.

Also, per the Final Rule, costs for the acquisition of land are also eligible for Water & Sewer infrastructure, but only if needed for the purposes of locating eligible project components.

Access link here: https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-Overview.pdf

ARPA Questions

Q3. Can our township use this money to repair or put a new roof on our township building?

A3. First, evaluate all categories of eligible uses. A new roof on the township administration building would not be an eligible cost under Premium Pay, Public Health and Negative Economic impact, or Water, Sewer and Broadband infrastructure.

However, Treasury does provide limited authority for local governments to use their Revenue Loss dollars on construction related projects as long as these project comply with Uniform Guidance and Federal Procurement rules. Refer to Treasury's Final Rule Overview, Spending on Government Services section.

Access link here: https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-Overview.pdf

ARPA Questions

Q4. How do I prepare a Federal Schedule with COVID-19 ARPA funding?

A4. Refer to the following resources for more help on putting together a Schedule of Expenditures of Federal Awards:

- AOS Sample Federal Schedule
- Free AOS Webinar, What is a Single Audit?
- Government Audit Quality Center's free resources on How to Prepare a Federal Schedule
- AOS Bulletin 2021-004, *Separate Accountability for Federal Programs Authorized by the American Rescue Plan Act of 2021*
- AOS Accounting for ARPA Bulletin Summary Infographic

Link #1: https://ohioauditor.gov/resources/covid19/Small_Govt_Example_SEFAs.pdf

Link #2: https://www.youtube.com/watch?v=5EwEEHgownk&&feature=youtu.be

Link #3: https://us.aicpa.org/content/dam/aicpa/interestareas/governmentalauditquality/resources/singleaudit/uniformguidanceforfederalrewards/downloadabledocuments/auditee_practice_aids_sefa_uniform_guidance.pdf.

Link #4: https://ohioauditor.gov/publications/bulletins/2021/2021-004.pdf

Link #5: https://ohioauditor.gov/resources/covid19/ARP_Bulletin_Summary.pdf

ARPA Questions

Q5. How are entities utilizing their ARPA funds?

A5. Every local government has been somewhat unique in their planning.

- Many are using Revenue Loss dollars to free up state and local funding to be used for construction/procurement-related expenses to avoid Federal Procurement rules.
- This is fine as long as underlying costs are eligible under the SLFRF program.

ARPA Questions

Q6. Please discuss what the unrestricted "revenue loss" ARPA funds can be used for. We have heard "general government services." What does that mean? Can they be used to help fund the building of a new jail or other new construction needed by the County? Are they truly "unrestricted"?

A6. Revenue Loss can be used for general government services.

- Essentially, this means anything that the local government has constitutional authority to spend its public resources on, except for those areas Treasury has restricted.
- Restrictions still exist! Revenue loss cannot be used to pay for debt, rainy day reserves, or claims, judgements or settlements. Also, spending of Revenue Loss dollars must also comply with the Uniform Guidance Act, including Cost Principles and Federal Procurement rules.

Access to link: https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1

ARPA Questions

Q6. Please discuss what the unrestricted "revenue loss" ARPA funds can be used for. We have heard "general government services." What does that mean? Can they be used to help fund the building of a new jail or other new construction needed by the County? Are they truly "unrestricted"?

A6.

- Under the COVID-19 Public Health category, Treasury has made clear that construction of new correctional facilities as a response to an increase in the rate of crime, construction of new congregate facilities to decrease the spread of COVID-19 in the facility, and construction of convention centers, stadiums or other large capital projects intended for general economic development or to aid impacted industries are generally ineligible uses. Refer to Treasury's Final Rule Overview, Capital Expenditures Section.

Access to link: https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-Overview.pdf

ARPA Questions

Q6. Please discuss what the unrestricted "revenue loss" ARPA funds can be used for. We have heard "general government services." What does that mean? Can they be used to help fund the building of a new jail or other new construction needed by the County? Are they truly "unrestricted"?

A6.

- However, Treasury does provide limited authority for local governments to use their Revenue Loss dollars on construction related projects as long as these project comply with Uniform Guidance and Federal Procurement rules. Refer to Treasury's Final Rule Overview, Spending on Government Services Section.

Access to link: https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-Overview.pdf

A Few Important Disclaimers …

- The federal guidance is constantly evolving. The information in this training may change over time. Local governments should diligently monitor federal and state pass-through entity guidance for updates and changes.
- AOS must maintain independence under *Generally Accepted Government Auditing Standards*.
- This training is intended to serve as a practical reference, it is not intended to be, nor does it provide or constitute legal advice.
- Local governments should work closely with legal counsel on significant legal questions; AOS will defer to well-reasoned opinions during an audit.

OHIO AUDITOR OF STATE
KEITH FABER

Please send Federal Questions to
FACCR@ohioauditor.gov

Marnie Fredrickson, Assistant Chief Deputy Auditor
Web: OhioAuditor.gov
Email: MAFredrickson@ohioauditor.gov
Social:@OhioAuditor