SPARK ROUND 1 - LOCAL GOVERNMENT

Capital improvement Projects and Real Estate Acquisition

Memorandum

Date: October 15, 2020

Re: Use of CRF Funding for Capital Improvement Projects and Real Estate Acquisitions

**DESCRIPTION**

This Memo outlines the process an entity should follow when planning to fund capital improvement projects or real property acquisition with Coronavirus Relief Fund (CRF) funding in order to properly respond to the COVID-19 crisis. As with all federal funding, large purchases and projects can be exposed to increased scrutiny, including audits. This memo is to serve as a guidance when considering such projects and purchases and document accordingly.

**BACKGROUND**

Expenditures reimbursed with Treasury’s CRF funds must comply with all federal requirements set forth in section 601(d) of the Social Security Act, as added by Section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Expenditures must be incurred in the period beginning March 1, 2020 and ending December 30, 2020 and must be recorded and documented using the generally accepted accounting principles and the provisions of Title 2 CFR Part 200 – Uniform Administrative Requirements, sections  2 C.F.R. § 200.303 regarding internal controls, 2 C.F.R. § 200.330 through 200.332 regarding subrecipient monitoring and management, and Subpart F regarding audit requirements.

The CARES Act, which funds the Coronavirus Relief Fund, requires that payments to cities, counties, states, territories, or Tribal governments only be used to cover expenses that:

* 1. Are necessary expenditures incurred due to the public health emergency due to COVID-19
  2. Were not accounted for in the state or local government budget approved as of March 27, 2020; and
  3. Were incurred between March 1, 2020 and December 30, 2020.

As a response to COVID-19, several prime and sub recipients are proposing large capital improvement projects or building acquisition. Treasury guidance states that governments may retain assets purchased with CRF funding after the close of the eligibility period, so long as those assets were purchased in accordance with SECTION 601(d)[[1]](#footnote-2). Such projects may be covered with CRF funding when specific conditions are met; these conditions shall be outlined in this memo along with recommended documentation substantiating the conditions. General philosophy revolves around the notion of using temporary solutions, rather than permanent, for immediate COVID-19 response actions.

Specific Treasury Guidance, released October 19, 2020, addresses real property acquisition and improvements related to COVID-19. “In the context of acquisitions of real estate and acquisitions of equipment, this means that the acquisition itself must be necessary. In particular, a government must

1. determine that it is not able to meet the need arising from the public health emergency in a cost-effective manner by leasing property or equipment or by improving property already owned and
2. maintain documentation to support this determination.

Such acquisitions and improvements must be completed and the acquired or improved property or acquisition of equipment **be put to use in service** of the COVID-19-related use for which it was acquired or improved **by December 30**.”[[2]](#footnote-3)

As with all CRF purchases, they must be necessary to address the pandemic, not previously budgeted, and incurred during the eligibility period of March 1, 2020 to December 30, 2020. When considering large capital improvement projects or property acquisition, an additional consideration of cost reasonableness applies. Because real estate acquisition, or large-scale capital improvement projects are likely to have significant cost, other short term and more cost reasonable efforts should be first considered and well-documented, where applicable. Those options are enumerated herein.

KEY TERMS

Capital Improvement Project: Major infrastructure projects for city or public-facing facilities, as defined by an individual local government entity. Often paid for through a city’s General Fund generated by local taxes and voted upon by local elected officials as part of a Capital Improvement Plan that usually includes a construction or procurement schedule, a justification for the project, and an explanation of expenses related to the project.

Property Acquisition: the purchase of real property.

ALTERNATIVE SOLUTIONS

Possible alternative solutions exist for addressing immediate responses associated with COVID-19 that should be considered and exhausted, *prior to* enacting permanent solutions such as large capital improvement projects or real estate asset acquisition. The considerations herein should be explored and documented where possible in conjunction with moveable asset purchasing or immoveable capital improvement projects. Often, these considerations or an appropriate combination thereof, can respond sufficiently to the issue.

1. Temporary Alterations of Existing Structures

Appropriate social distancing[[3]](#footnote-4) can sometimes be achieved by erecting temporary cubicles, partitions, or other barriers in existing buildings and rooms where normal work activity happens. The recipient should evaluate whether current building capacity allows for proper social distancing within the existing structure, and the resulting findings or considerations should be documented in the file.

*Example(s) of documentation could include: bids to erect temporary partitions, email correspondence pertaining to temporary alterations, etc.*

1. Staggering Work Schedules

In an effort to reduce exposure among employees with shared work spaces, staggered work models or schedules should be explored. If desired work outcomes can be achieved sufficiently utilizing flexible “working hours” models or schedules, these alternatives should be prioritized and implemented whenever possible.

*Example(s) of documentation could include: Considerations toward staggering work schedules including meeting minutes, memorandums, email correspondence, etc.*

1. Increasing Remote Capabilities

All efforts should be made to accommodate remote working models for employees wherever possible. CRF funding can be used to supply personal equipment such as laptops and mobile hotspots to employees for remote working enhancements.[[4]](#footnote-5)

*Example(s) of documentation could include: Bids to purchase equipment, considerations toward remote working, etc.*

1. Leasing Space or Property

If the above alternatives are not sufficient or appropriate in protecting employees during work hours, and a physical workspace is needed, a subrecipient shall explore any and all appropriate temporary leasing options. CRF funding can be used for temporary lease options through the eligibility period ending December 30, 2020.

*Example(s) of documentation could include: Internet searches or newspaper articles for available lease opportunities, correspondence with real estate agents, etc.*

1. Renovation of Currently Owned Property

An entity can use CRF funding to permanently alter property. Examples can include: renovating a warehouse to store PPE, HVAC upgrades, renovating workspaces to smaller individual spaces, touchless/motion-activated equipment facility upgrades, etc.

*Example(s) of documentation could include: bids for construction/construction/equipment, correspondence pertaining to and documents relative to the procurement process, etc.*

1. Temporary Structures

Temporary, moveable structures can be erected such as trailers or tents.[[5]](#footnote-6) These structures can serve to respond to COVID-19 to perform necessary activities such as administering testing, temperature taking, and PPE storage. Time considerations, sensitive to the temporary nature of the current public health situation, are a major factor when considering construction projects.

*Example(s) of documentation could include: purchase orders, competitive bids, email correspondence, etc.*

1. No Action Taken

Entities should explore the implications of inaction as part of its reasonability assessment and determine the necessity to address *immediate* COVID-19 response, preparation and mitigation. In some cases, the benefits of action comparative to cost and effort may not outweigh inaction altogether.

ADDITIONAL CONSIDERATIONS

Once the above alternative solutions have been explored and deemed insufficient to respond to the issue, the following additional considerations to capital projects and property acquisitions apply and should be documented appropriately.

1. Cost Reasonableness

Use of CRF must appropriately incorporate considerations for both reasonableness and necessity as defined in 2 CFR 200. Specifically, projects or purchases should include measures to ensure the project is bid appropriately, is the best use of funds, and is cost reasonable.

When determining reasonableness, consideration must be given to:

* Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award
* The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of CRF use
* Market prices for comparable goods or services for the geographic area
* Whether the individuals concerned in the use or acquisition of goods or services acted with prudence
* Whether the purchasing entity significantly deviated from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the cost of goods or services utilizing CRF.

*Example(s) of documentation could include: competitive bids, email correspondence, RFP, fair market assessment, etc.*

1. Procurement & Implementation Timeline

Capital improvement construction projects should be substantially complete, and in use by December 30, 2020. CRF should be utilized only for those costs of goods and services delivered or performed prior to December 30, 2020. These timeline considerations should be carefully evaluated prior to proceeding with acquisition or procurement.

*Example(s) of documentation could include: procurement timeline, construction timeline, equipment availability, supply chain considerations, RFP, email correspondence, eligibility memo, etc.*

1. Alternative Funding Sources

Several funding options exist in addition to CRF that may be better suited for the proposed goods, services or projects. Alternative funding options should be explored for eligibility, suitability and timeline for eligible use. Additionally, entities should ensure when using multiple funding sources, to avoid duplicating expense reimbursements.

1. FAQ dated 9/2/2020 p.12, q.4 https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf [↑](#footnote-ref-2)
2. FAQ dated 10/19/2020 p.58 q.58, https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf (emphasis added) [↑](#footnote-ref-3)
3. https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html [↑](#footnote-ref-4)
4. Treasury Guidance, Updated 9/2/2020, p.4 https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf [↑](#footnote-ref-5)
5. FAQ dated 9/2/2020 p.6, q.28 https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf [↑](#footnote-ref-6)