



Maritime Administration (MARAD) Office of Ports & Waterways

BASIC REQUIREMENTS WORKSHOP

**Hosted By: Tracey Ford, Director Office Federal
Assistance Education & Engagement**

Maritime Administration (MARAD)

Office of Ports & Waterways

Mission & Program Overview

PRESENTER TRACEY L. FORD,
DIRECTOR OFFICE OF FEDERAL ASSISTANCE EDUCATION & ENGAGEMENT



**Administrator
Ann C. Phillips**



**Deputy Administrator
Lucinda Lessley**

MISSION:

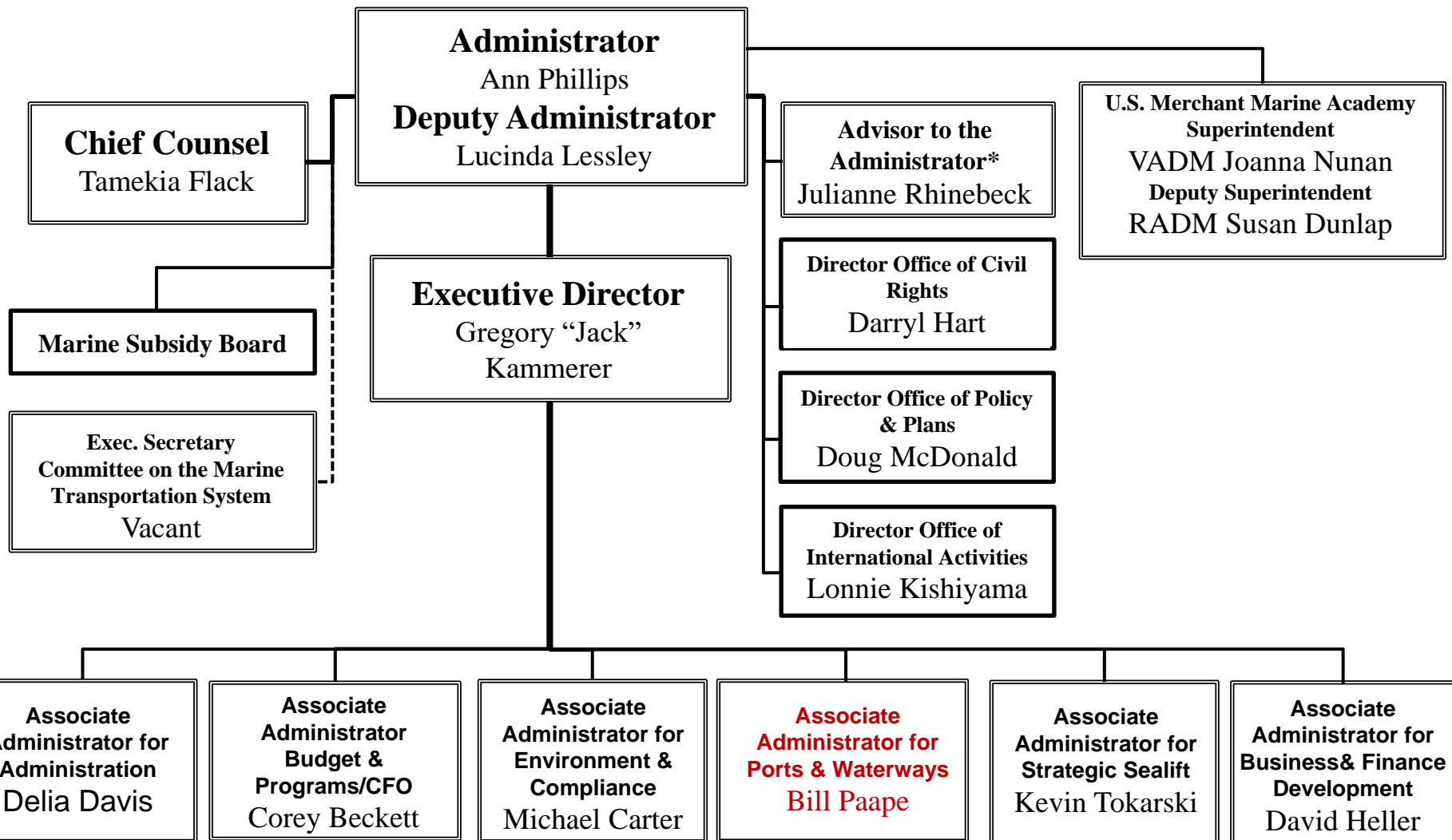
Improve the Maritime Transportation System, including Ports, Connectors and Marine Highways through Investment, Integration and Innovation to meet the current and future needs of the Nation.

VISION:

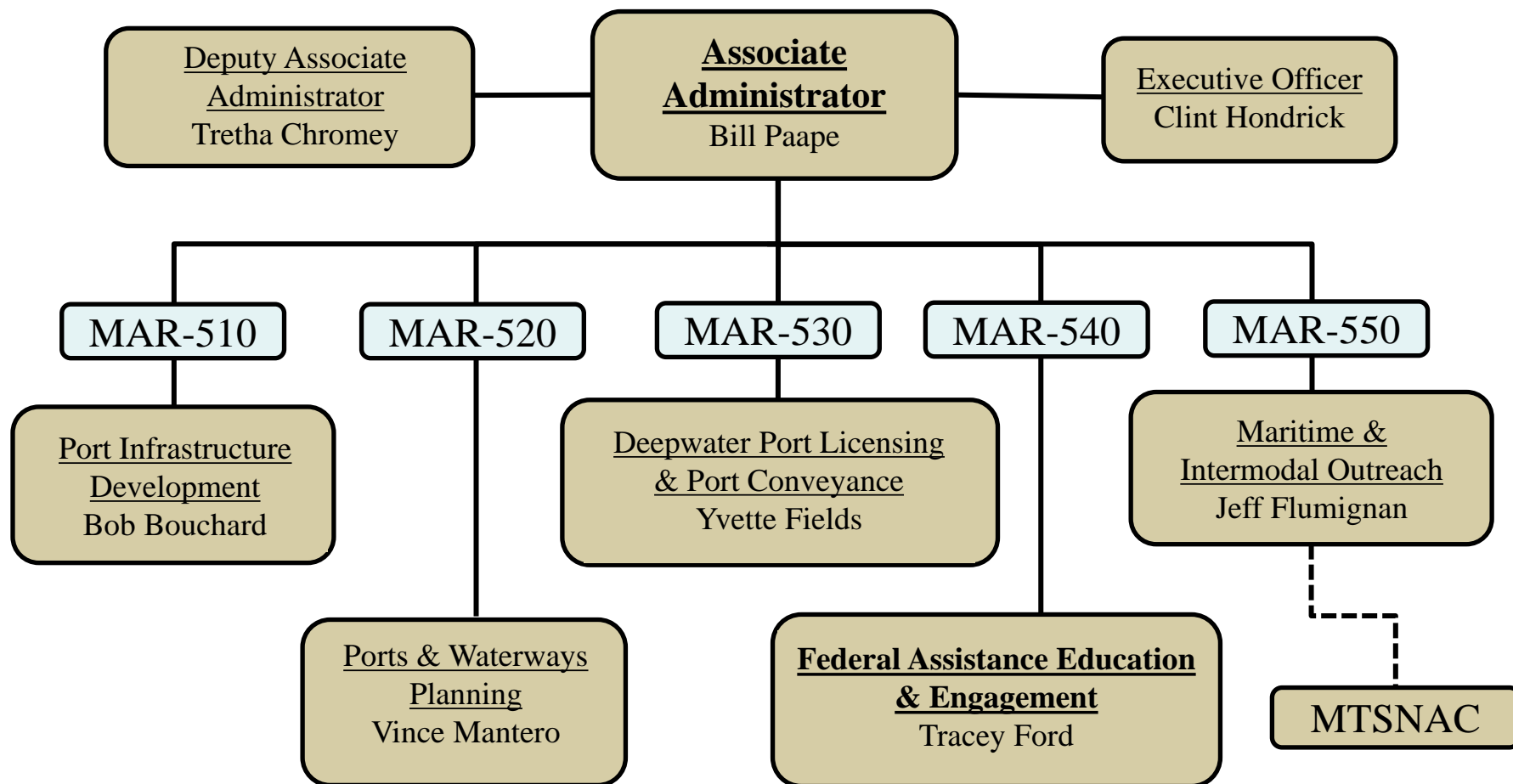
A capable, connected system – water, road and rail – to benefit every American.



MARAD Organizational Chart



* Oversees the Public Affairs & Legislative Affairs Offices



66 Positions

- 56 Government Employees
 - 10 Contractors
- HQ: 52 / Gateway Offices 14



William (Bill) Paape
Associate Administrator



Tretha Chromey
Deputy Associate
Administrator



Robert (Bob) Bouchard, Director
Port Infrastructure Development



Vince Mantero, Director
Ports & Waterways Planning



Yvette Fields, Director
Office of Deepwater Port
Licensing & Port Conveyance



Tracey Ford, Director
Federal Assistance,
Education & Engagement



Jeff Flumignan, Director
Maritime & Intermodal Outreach

Office of Ports & Waterways (MAR-500)

Federal Assistance Education & Engagement (MAR-540)

MAR-510

Port Infrastructure Development

Port Infrastructure Development Grants

Project Management

Grant Management Oversight

MAR-520

Ports & Waterways Planning

United States Marine Highways

Port Development & Intermodal Planning

Supply Chain Analysis

Research

MAR-530

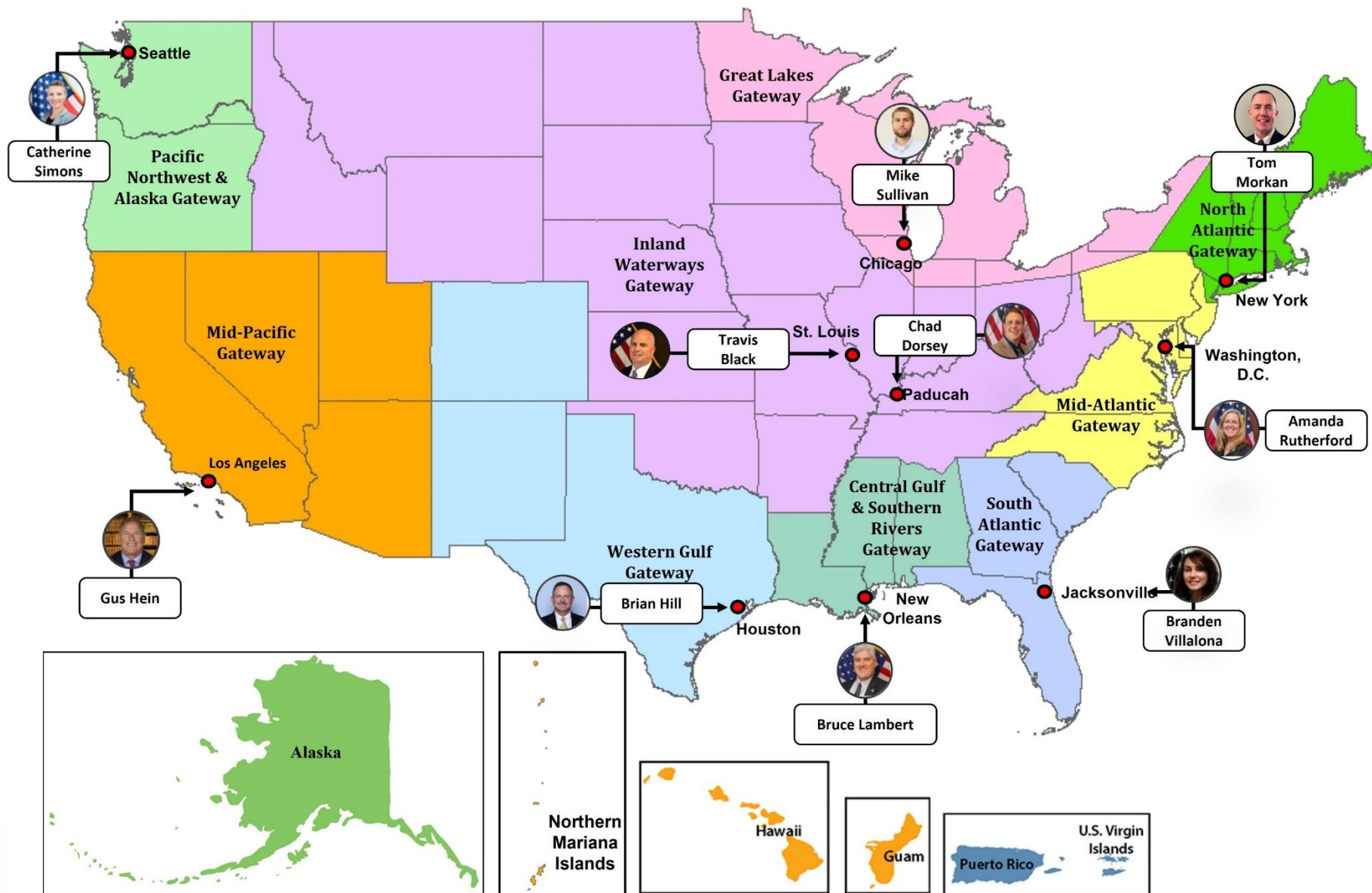
Deepwater Port Licensing & Port Conveyance

Deepwater Port Licensing

Port Conveyance

Maritime & Intermodal Outreach (MAR-550)

Gateway Offices & Directors

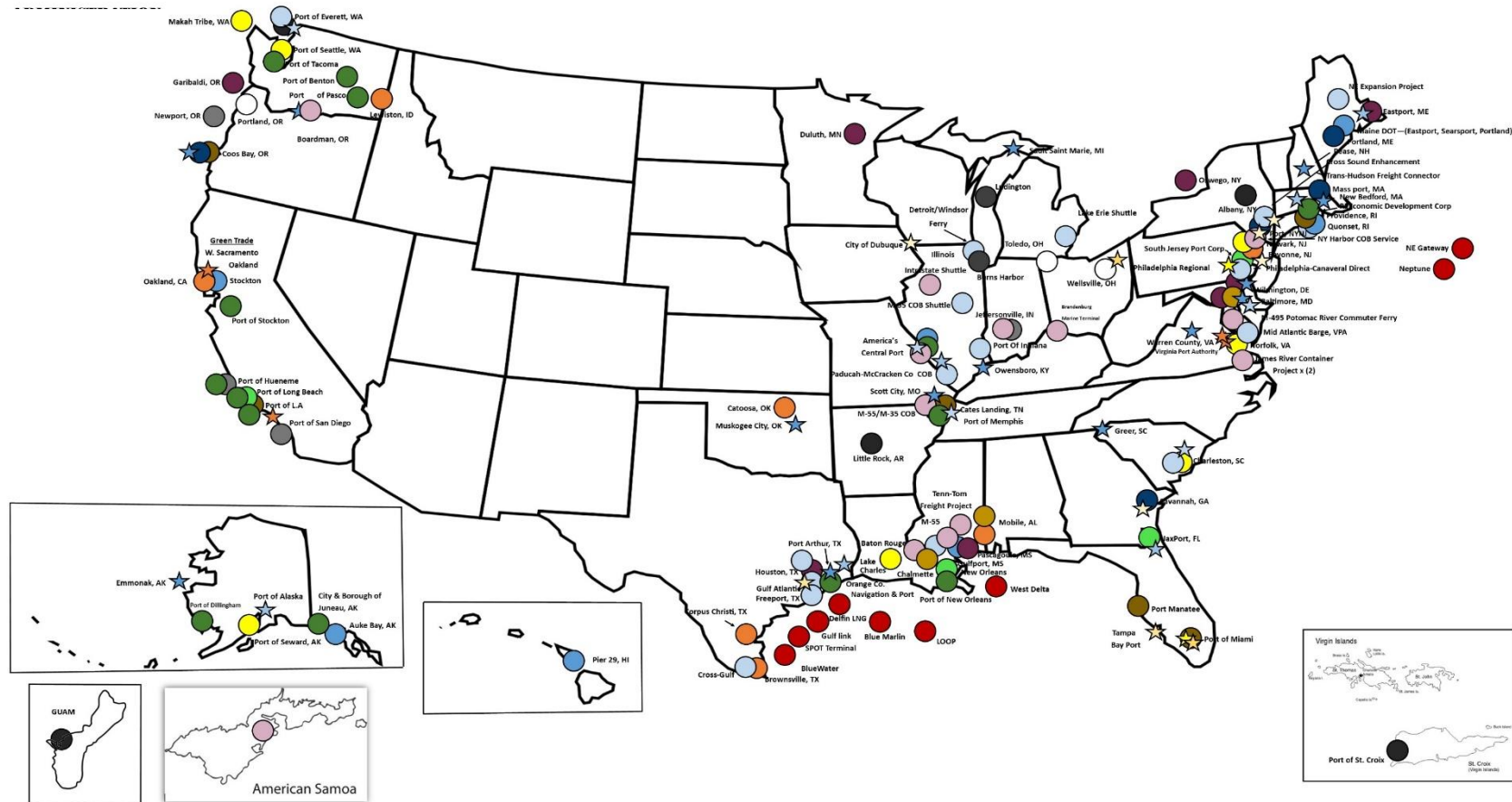


- **Rebuilding American Infrastructure with Sustainability and Equity RAISE**) - provides a unique opportunity for the DOT to invest in road, rail, transit and port projects that promise to achieve national objectives. Previously known as Transportation Investment Generating Economic Recovery, or TIGER Discretionary Grants.
- **Infrastructure For Rebuilding America (INFRA)** - advances a grant program established in the FAST Act of 2015 to help rebuild America's aging infrastructure. INFRA utilizes selection criteria that promote projects with national and regional economic vitality goals while leveraging non-federal funding to increase the total investment by state, local, and private partners.
- **Port Infrastructure Development Program (PIDP)** - was authorized by the National Defense Authorization Act for Fiscal Year 2020 (NDAA) (Pub. L. No. 116-92, December 20, 2019) and the Further Consolidated Appropriations Act 2020. PIDP was developed to improve facilities within, connecting to, out of, or around coastal seaports, inland river ports and Great Lakes ports.

- **United States Marine Highway Program** - expands the use of America's navigable waters by working closely with public and private organizations to:
 - (1) develop and expand marine highway service options and facilitate their further integration into the current U.S. surface transportation system, especially where water-based transport is the most efficient, effective and sustainable option.
 - (2) highlight the benefits, increase public awareness and promote waterways as a viable (in some cases a superior) alternative to "landside" shipping and transportation options.

- **Railroad Rehabilitation & Improvement Financing (RRIF)** - Under the RRIF program, funds can be made available for the development or improvement of railroad infrastructure. The Federal Railroad Administration can provide direct loans or loan guarantees to state or local governments, railroads, government sponsored companies, or railroad joint ventures.
- **The Transportation Infrastructure Finance and Innovation Act (TIFIA)** - program provides credit assistance for qualified projects of regional and national significance. Many large-scale, surface transportation projects - highway, transit, railroad, intermodal freight, and port access - are eligible for assistance.

Discretionary Grant Awards and Selected Projects



| | | | | | |
|-------------------------|--------------------------|----------------------------|--------------------------|-----------------------|-----------------------|
| ○ ARRA Grants 2009 (3) | ● TIGER V FY 2013 (8) | ● FASTLANE 2016 (5) | ● MH GRANTS \$12.6M (20) | ★ INFRA FY 17/18 (2) | PIDP 2020 \$205M (17) |
| ● TIGER I FY 2009 (7) | ● TIGER VI FY 2014 (7) | ● FASTLANE II 2017 (2) | ★ BUILD 2018 (14) | ★ INFRA FY 19 (2) | PIDP 2021 \$241M (25) |
| ● TIGER II FY 2010 (6) | ● TIGER VII FY 2015 (4) | ● DEEP WATER PORTS (9) | ★ BUILD 2019 (6) | ★ INFRA FY 20 (2) | |
| ● TIGER III FY 2011 (4) | ● TIGER VIII FY 2016 (5) | ● PORT CONVEYANCE (14) | ★ BUILD 2020 (5) | ★ INFRA FY 21 (5) | |
| ● TIGER IV FY 2012 (7) | ● TIGER VIII FY 2017 (3) | ● MH PROJECTS \$51.7M (25) | ★ ATCMTD 16-20 (4) | PIDP 2019 \$287M (15) | |

MARAD Total Grant Investments

TIGER/BUILD/RAISE Discretionary Grants Program

| Program Name | Fiscal Year | Award Date | Awards Made | Port Awards | Port Funding |
|--------------|-------------|------------|-------------|-------------|---------------------|
| TIGER | 2009 | 2/17/2010 | 51 | 7 | \$ 128,940,000.00 |
| TIGER | 2010 | 10/20/2010 | 74 | 6 | \$ 87,340,000.00 |
| TIGER | 2011 | 12/15/2011 | 46 | 4 | \$ 67,607,000.00 |
| TIGER | 2012 | 6/22/2012 | 47 | 7 | \$ 68,125,000.00 |
| TIGER | 2013 | 9/5/2013 | 52 | 8 | \$ 63,001,000.00 |
| TIGER | 2014 | 9/12/2014 | 72 | 7 | \$ 74,240,000.00 |
| TIGER | 2015 | 10/29/2015 | 39 | 4 | \$ 34,300,000.00 |
| TIGER | 2016 | 7/29/2016 | 40 | 5 | \$ 54,482,000.00 |
| TIGER | 2017 | 3/9/2018 | 41 | 3 | \$ 45,700,000.00 |
| BUILD | 2018 | 12/11/2018 | 92 | 14 | \$ 232,608,000.00 |
| BUILD | 2019 | 11/12/2019 | 55 | 7 | \$ 128,550,000.00 |
| BUILD | 2020 | 9/16/2020 | 70 | 5 | \$ 77,268,000.00 |
| RAISE | 2021 | 11/19/2021 | 90 | 5 | \$ 75,960,000.00 |
| RAISE | 2022 | 8/11/2022 | 166 | 10 | \$ 158,551,000.00 |
| TOTAL | | | | | \$ 1,296,672,000.00 |

MARAD Total Grant Investments (Cont.)

FASTLANE/INFRA Discretionary Grants Program

| Program Name | Fiscal Year | Award Date | Awards Made | Port Awards | Port Funding |
|--------------|-------------|------------|-------------|-------------|-------------------|
| FASTLANE | 2016 | 9/7/2016 | 18 | 5 | \$ 115,391,000.00 |
| FASTLANE | 2017 | 8/8/2017 | 10 | 2 | \$ 14,850,000.00 |
| INFRA | 2018 | 6/8/2018 | 26 | 2 | \$ 32,500,000.00 |
| INFRA | 2019 | 7/24/2019 | 20 | 2 | \$ 17,060,000.00 |
| INFRA | 2020 | 6/18/2020 | 20 | 3 | \$ 105,524,000.00 |
| INFRA | 2021 | 6/30/2021 | 24 | 5 | \$ 153,870,000.00 |
| INFRA | 2022 | 9/15/2022 | 26 | 2 | \$ 32,295,000.00 |
| TOTAL | | | | | \$ 471,490,000.00 |

PIDP Discretionary Grants Program

| Program Name | Fiscal Year | Award Date | Awards Made | Port Awards | Port Funding |
|--------------|-------------|------------|-------------|-------------|---------------------|
| PIDP | 2019 | 2/14/2020 | 15 | 15 | \$ 287,303,000.00 |
| PIDP | 2020 | 10/15/2020 | 17 | 17 | \$ 204,994,000.00 |
| PIDP | 2021 | 12/23/2021 | 25 | 25 | \$ 241,473,000.00 |
| PIDP | 2022 | 10/24/2022 | 41 | 41 | \$ 703,123,000.00 |
| TOTAL | | | | | \$ 1,436,893,000.00 |

MARAD Total Grant Investments (Cont.)

United States Marine Highway Program

| Program Name | Fiscal Year | Awards Date | Awards Made | Port Awards | Port Funding |
|--------------|-------------|-------------|-------------|-------------|------------------|
| USMHP | 2010 | 8/11/2010 | 3 | 3 | \$ 6,200,000.00 |
| USMHP | 2016 | 10/20/2016 | 6 | 6 | \$ 4,850,000.00 |
| USMHP | 2017 | 8/8/2018 | 6 | 6 | \$ 4,872,000.00 |
| USMHP | 2018 | 4/3/2019 | 3 | 3 | \$ 6,790,000.00 |
| USMHP | 2019 | 12/30/2019 | 9 | 9 | \$ 7,503,000.00 |
| USMHP | 2020 | 6/9/2020 | 8 | 8 | \$ 9,555,750.00 |
| USMHP | 2021 | 12/7/2021 | 9 | 9 | \$ 12,600,138.00 |
| USMHP | 2022 | 12/29/2022 | 12 | 12 | \$ 38,621,771.00 |
| TOTAL | | | | | \$ 90,992,659.00 |

TOTAL GRANT PORTFOLIO INVESTMENTS

\$ 3,296,047,659.00

Pre-Award Phase I - Notice of Funding Opportunity (NOFO) announcement, application review, and project selection

RAISE & INFRA activities completed by OST; and PIDP & USMHP activities completed by MARAD

Pre-Award Phase II - Environmental review, Engineering review, Grants management review

All activities completed by MARAD

Award Phase - Finalization of grant agreement

All activities completed by MARAD with OST approval for RAISE & INFRA

Post-Award Phase - Implementation, Reporting, and Close-out

All activities completed by MARAD

NOFO

The Notice of Funding Opportunity (NOFO) for RAISE, INFRA, PIDP, and USMHP discretionary grant programs are published in the Federal Register and posted in grants.gov

Applications

Applicants must submit project applications in accordance with NOFO instructions.

Evaluation

Eligible applications are reviewed in accordance with evaluation criteria published in the Federal Register.

Selection

Projects are selected by OST or MARAD. OST issues press release on projects selected for award consideration.

Award Notification

MARAD conducts congratulatory call with successful Recipient.

Kick-Off Meeting

MARAD conducts (virtual or in person) kick-off meeting with Recipient to discuss the pre-award process, important requirements, what to expect, and expected timelines.

NEPA Process

NEPA team works with the Recipient to complete NEPA requirements.

Engineering Process

MARAD Engineering Team works with Recipient to assess project risk and complete the engineering risk registers.

Grants Management Process

The Grant Management teams works with the Recipient to monitor completion of all pre-award activities including the development of the draft grant agreement.

MARAD

Once the NEPA process is completed and required approvals are obtained, the Grant Management Special and the Grants Officer finalizes the Grant Agreement and sends it to the Recipient's authorized representative for final review and signature.

RECIPIENT

The applicant is required to return three original signature copies of the Grant Agreement to the Grants Officer.

MARAD

Once received, the Grant Agreement will be placed into the MARAD concurrence process for final approval.

MARAD

Once approved, the Grant Agreement is signed (executed) by the Maritime Administrator.

MARAD

Lastly, the Grants Officer will issue a Notice to Proceed to officially start the project to the Recipient.

Grant Modification Request

These are revisions to the grant scope, schedule, budget are considered modifications to the award and may require MARAD approval. Recipients are required to report and discuss these changes with MARAD.

Quarterly Progress Reports

Reports track and updated project status regarding scope, schedule, and budget during the performance period. Report is to update information about project implementation, progress, changes, and potential issues. Reports are to be submitted on the 20th day of the quarter in which the report is due.

Quarterly Performance Reports

After Substantial Completion of the construction, Quarterly Performance Measures report are due. Reports to be sent for 12 consecutive quarters. This report provides an ex-post examination of project effectiveness.

Financial Report SF-425

The Federal Financial Report is a cumulative report of all financials transactions during a reporting period. The report is due quarterly.

SF-270

All request for reimbursements must be submitted on the Request for Advance or Reimbursement (SF-270) with supporting documentation. All reimbursements are to be submitted through the iSupplier system for processing. MARAD **does not accept Advance payments.**

Single Audits

Recipients who expend \$750,000 or more in Federal award funds in a fiscal year must have a Single audit conducted by an independent auditor in accordance with 2 CFR 200 Subpart F.

Grant Overnight Reviews

Per 2 CFR 200.328, MARAD is authorized to conduct site visits as warranted by program needs. Reviews are completed as desk and/or on-site reviews.

Compliance Reviews

Reviews are conducted to validate the Recipient's compliance with Federal statutory laws and regulations pertaining to their Federal award. This review will be completed by the MARAD's Compliance Team under the direction of the Office of the Chief Financial Officer.

Grant Closeout

The closeout process starts when all construction activities are completed, and the last performance measure report has been submitted. Per 2 CFR 200.343, the Recipient is required to submit, no later than 90 calendar days after the end of the performance period, all financial, performance, and other reports as required by the terms and conditions of the Federal award.

Important Requirements

- Procurement Standards
- Build America, Buy America Act “Buy America” Requirements
- Davis-Bacon Act
- Pre-Award Costs and Efficient Use of non-Federal Funds
 - NOTE: No costs can be incurred in this phase without MARAD approval
- *Civil Rights Obligations and Nondiscrimination Laws

***Civil Rights training to be provided by the MARAD Office of Civil Rights at a later date)**

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Associate Administrator

Office of Ports & Waterways

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Jeff Flumignan

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The National Environmental Policy Act
(NEPA)
National Historic Preservation Act (NHPA)
Section 106

PRESENTER KRISTINE GILSON,
OFFICE OF ENVIRONMENTAL COMPLIANCE

- The National Environmental Policy Act (NEPA) of 1970
- Requires that all Federal Agencies consider environmental impacts of all **actions** that they are considering or undertake or that they undertake.
- NEPA requires agencies to assess the environmental effects of proposed **actions PRIOR** to making a decision to move forward
- An action includes:
 - Projects and programs partially or entirely financed, assisted, conducted, regulated, or approved by a federal agency
 - New or revised agency rules, regulations, plans, policies, or procedures
 - Legislative proposals
- Basically, all actions authorized or funded by MARAD.

- All MARAD grant and loan programs are subject to NEPA.
- NEPA must be completed before a Grant Agreement can be executed and funding can be obligated.
- That means, for the most part, the grant project cannot be started before NEPA is completed. Except for some pre-approved exceptions, that means until NEPA is completed, there can be no procurement, no bidding, no construction.

Permitting

- NEPA is not a permit. It is a process.
- Securing local/state/federal permits does not equal NEPA compliance.
- Compliance with other environmental laws does not absolve MARAD of the responsibility to also comply with NEPA.
- States have a process similar to NEPA. A State NEPA document cannot be used in place of a Federal NEPA document (however, the State NEPA document can be used to create a Federal NEPA document).

3 Classes of Action

- **Categorical Exclusion (CE)**
 - ✓ Category actions that individually or cumulatively have no significant effect on the quality of the human environment
- **Environmental Assessment (EA)**
 - ✓ Includes those actions for which the significance of the impacts are uncertain
- **Environmental Impact Statement (EIS)**
 - ✓ Cover those actions that have been determined to have significant environmental impact

Categorical Exclusion (CE)

- A CE is one of three basic types of NEPA analysis.
- A CE is a category of **actions** that, for many reasons, an Agency has determined do not generally result in significant environmental impacts.
- Common misconception that a CE means no NEPA analysis is required.
- CE's must still be documented and retained by MARAD.

When a CE is not Appropriate

- Significantly affects public health or safety;
- Highly uncertain, involve unique or unknown risks, have disproportionately high and adverse effects on minority and low-income populations, or that are substantially controversial on environmental grounds;
- Establishes a precedent for future actions that have the potential for significant impacts;
- Requires Federal or state permits (e.g.. in-water work)
- Violates Federal, state, tribal, or local environmental laws, rules, or regulations;
- Project has substantial public interest; or
- Significantly affects protected resources such as eligible or listed properties on the National Register of Historic Places, threatened/endangered species, and wildlife refuges.

Potential Timelines

The average timeframe for the different levels of NEPA documents are as follows:

- Categorical Exclusion: 2-3 months
- Environmental Assessment: 6-12 months
- Environmental Impact Statement: 12-24 months

Section 106 Consultation

- National Historic Preservation Act (NHPA)
- Separate from NEPA but required to be completed prior to finalizing NEPA.
- For EVERY project, including Categorical Exclusions, consultation with SHPO is required PRIOR to initiating the project (minimum 30-day response time)

Section 7 Compliance

- Endangered Species Act (ESA)
- Part of the NEPA process (including Categorical Exclusions)
- For EVERY project, consultation with NOAA National Marine Fisheries and US Fish & Wildlife is required PRIOR to initiating the project

NEPA from Other Federal Agencies

- Even if another agency has completed NEPA for the project, MARAD is still required to complete NEPA.
- If an agency, such as the Corps of Engineers, has already prepared a NEPA document for a project, MARAD can sometimes adopt the NEPA that has been completed.
 - But MARAD needs to evaluate that NEPA documentation for sufficiency before making that determination. The document must cover the entirety of the project, be up to date, and meet MARAD NEPA standards.
- If MARAD can adopt another agency's NEPA document, there is still a process to evaluate and document that adoption. Sometimes consultations need to be re-initiated to fulfill agency responsibilities.

Expediting NEPA

- Most common is early coordination with USACE. This can “unofficially” happen prior to grant award.
- Retain services of an environmental consultant prior to grant award.
- Understand that MARAD does not have a CatEx for rail or roads.
- Plan to utilize non-invasive surveys/studies as part of pre-award activities.
- Begin discussions with MARAD NEPA staff as soon as possible after grant award.
- Plan early for a MARAD NEPA staff site visit soon after grant award. Engage resource agencies and, if needed, include them on the site visit.

Questions?

Domestic Preference Requirements

PRESENTER WADE MOREFIELD,

OFFICE OF PORT INFRASTRUCTURE DEVELOPMENT

What is domestic preference?

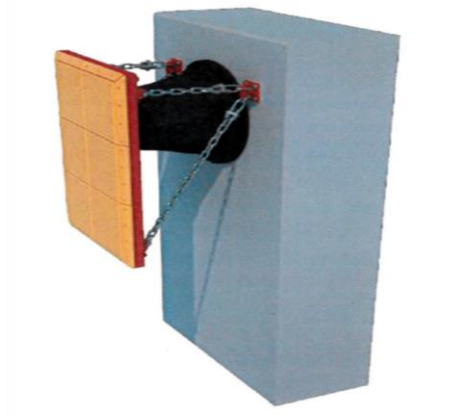
- It is Federal policy to maximize the use of goods, products, and materials produced in the United States.
- Domestic preference requirements include all statutes, regulations, rules, and Executive Orders relating to Federal procurement or Federal financial assistance, including those that refer to “Buy America” or “Buy American” that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured goods.

Why is it important?

- Domestic preference requirements promote economic and national security, stimulate economic growth, create good jobs at decent wages, strengthen our middle class, and support the American manufacturing and defense industrial bases.
- Domestic preference requirements apply to all MARAD-administered grant projects.

- Domestic Preference requirements have been in effect since the original passage of the Buy American Act in 1933, but successive administrations have continued to revise and refine these requirements to maintain a strong United States industrial base.
- **Domestic Preference requirements are here to stay, and we expect they will continue to evolve.**

Domestic Preference Requirements



MARAD's Domestic Preference Content Requirements

MARAD, unlike most other USDOT operating agencies, does not have its own specific Buy America(n) authority that it applies uniformly to all its grant programs. Only the Small Shipyard Grant program has its own Buy America statutory authority.

Therefore, *prior to the enactment of the Build America, Buy America Act (BABA)* (part of the Bipartisan Infrastructure Law), MARAD typically applied the Buy American Act (41 U.S.C. Chapter 83) requirements to its **TIGER/BUILD/RAISE, Marine Highway, and PIDP** grant projects through the terms of each grant agreement.

If a recipient executed a grant prior to May 14, 2022 with MARAD, it should refer to the specific domestic preference content provisions in its grant agreement, typically referred to as “Buy American requirements.”

BABA does not apply to those grants executed prior to May 14, 2022.

Domestic Content Requirements – Fastlane/INFRA Projects

- MARAD also administers Fastlane/INFRA grants on behalf of the Office of the Secretary of Transportation. These grants follow Federal Highway Administration (FHWA) requirements in Title 23, United States Code, including FHWA's Buy America requirements at 23 U.S.C. 313 and implementing regulations at 23 CFR 635.410.
- Under these requirements, all iron and steel permanently incorporated in the Fastlane/INFRA project must have all manufacturing processes, from the initial melting stage through the application of coatings, occurring in the US.
- And, for Fastlane/INFRA projects executed after May 14, 2022, all construction materials used in the Project are subject to the domestic preference requirement in the Build America, Buy America Act. Construction materials include such items as lumber, glass, and drywall. To be considered domestic, all manufacturing processes of construction materials must occur in the US.

Waivers

Generally, the following waivers are available, subject to approval by USDOT:

- Non-availability - if the articles, materials, or supplies are not mined, manufactured, or produced in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality;
- Application of the domestic content requirements would be inconsistent with the public interest; or
- The cost of the domestic material is unreasonable.

Determinations of waivers are fact-based.

MARAD requires applicants/recipients to provide detailed information about the products, manufacturers, and each applicant's/recipient's efforts to comply with the applicable domestic content requirements when requesting a waiver.

Build America, Buy America Act (BABA) Requirements

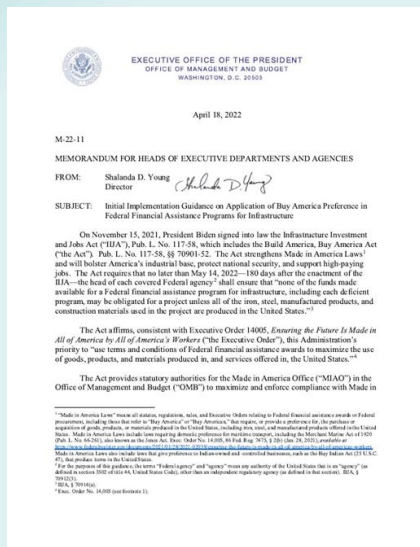
- PIDP, Marine Highway, and BUILD/RAISE grants executed after May 14, 2022 are subject to the requirements of BABA, which was enacted as part of the Bipartisan Infrastructure Law in November of 2021 and applies to all projects for infrastructure.
- This act requires that all iron, steel, manufactured products, and construction materials used in the grant project be produced in the United States.
- Generally, this means that you should not use funds under the award unless:
 - All manufacturing processes of iron, steel, and construction materials occurs in the U.S.; and
 - All manufactured products are manufactured in the U.S. and the cost of the product's components manufactured in the U.S. is greater than 55% of the total cost of all components.

Domestic Preference Requirements

Build America, Buy America Requirements *Current* Guidance for grants executed after May 14, 2022



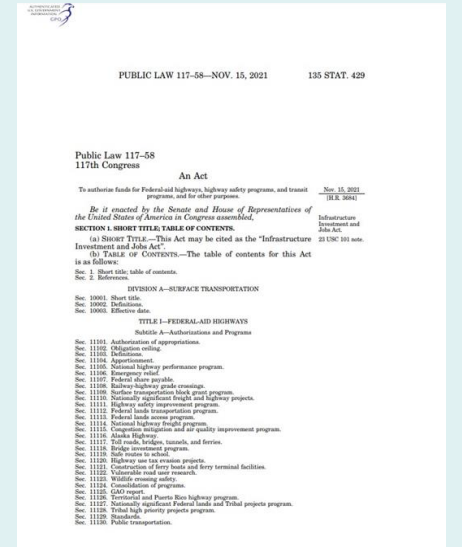
Executive Order 14005



OMB Implementation



OMB Guidance



Infrastructure Investment & Jobs Act

Most Important

Build America, Buy America Requirements for grants executed after May 14, 2022

**SAMPLE BUY AMERICA AWARD TERM FOR MARAD GRANTS EXECUTED
AFTER MAY 13, 2022—FOR REFERENCE ONLY**

**REQUIRED USE OF AMERICAN IRON, STEEL, MANUFACTURED PRODUCTS,
AND CONSTRUCTION MATERIALS**

This award term implements § 70914(a) of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021) and Office of Management and Budget (OMB) Memorandum M-22-11, "Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure."

Requirement to Use Iron, Steel, Manufactured Products, and Construction Materials Produced in the United States.

The Recipient shall not use funds provided under this award for a project for infrastructure unless:

- (1) all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product; and
- (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

Inapplicability.

The domestic content procurement preference in this award term only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

Waivers.

When necessary, the Recipient may apply for, and the USDOT may grant, a waiver from the domestic content procurement preference in this award term.

A request to waive the application of the domestic content procurement preference must be in writing. The USDOT will provide instructions on the waiver process and on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public

Questions?



U.S. Department of Transportation
Office of Inspector General

SAC Craig Miles
ASAC Allen Waked
ASAC Greg Thompson
Mid-Atlantic Region

DOT-OIG Fraud Awareness Briefing

- ☐ Coronavirus Aid, Relief and Economic Security (CARES) Act
- ☐ Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act
- ☐ American Rescue Plan (ARP) Act
- ☐ Infrastructure Investment and Jobs Act (IIJA)
- ☐ 'Red Flag' Indicators for Common Fraud Schemes
- ☐ Civil and Criminal Statutes
- ☐ American Recovery and Reinvestment Act (ARRA) Previous Stimulus Relief Funding/Success Stories
- ☐ Hotline/Contact Information
- ☐ Questions

In March 2020, the President signed the Coronavirus Aid, Relief and Economic Security (CARES) Act into law, providing over \$2 trillion in emergency relief in the face of the ongoing COVID-19 pandemic. Along with expanded worker protections and individual payments to taxpayers, the bill also provided over \$36 billion to DOT:

Coronavirus Aid, Relief, and Economic Security (CARES) Act

| DOT Agency | Funds Provided |
|---|-------------------------|
| Federal Aviation Administration | \$10,025,000,000 |
| Federal Transit Administration | \$25,000,000,000 |
| Federal Railroad Administration | \$1,018,250,000 |
| Office of the Secretary of Transportation | \$57,753,000 |
| Federal Motor Carrier Administration | \$150,000 |
| Maritime Administration | \$4,134,000 |
| Office of Inspector General | \$5,000,000 |
| Total Amount Provided by the CARES Act | \$36,110,287,000 |

In December 2020, the President signed the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act, which includes \$900 billion in supplemental appropriations for COVID-19 relief. The bill also provided over \$27 billion to DOT:

Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act

| DOT Agency | Funds Provided |
|---|-------------------------|
| Federal Aviation Administration | \$2,000,000,000 |
| Federal Highway Administration | \$10,000,000,000 |
| Federal Transit Administration | \$14,000,000,000 |
| Federal Railroad Administration | \$1,000,000,000 |
| Office of the Secretary of Transportation | \$23,332,000 |
| Total Amount Provided by the CRRSA Act | \$27,023,332,000 |

In March 2021, the President signed The American Rescue Plan (ARP) Act, a \$1.9 trillion economic stimulus bill. The bill provided over \$43 billion to DOT:

American Rescue Plan (ARP) Act

| DOT Agency | Funds Provided |
|---|-------------------------|
| Federal Aviation Administration | \$8,009,000,000 |
| Federal Transit Administration | \$30,461,356,000 |
| Federal Railroad Administration | \$1,700,000,000 |
| Office of the Secretary of Transportation | \$3,000,000,000 |
| Total Amount Provided by the ARP Act | \$43,170,356,000 |

Infrastructure Investment and Jobs Act (IIJA) includes 5-year reauthorization (FY-22-26) of surface transportation programs and direct advanced appropriations.

- 5-year package is over \$660 billion
- IIJA includes significant new discretionary and formula programs, such as
 - ❑ Bridge Formula Program: \$28 billion (5 years)
 - ❑ Bridge Investment Program: \$16 billion
 - ❑ National infrastructure Investments: \$15 billion (Megaprojects)
 - Local and regional project assistance (RAISE): \$15 billion
 - Nationally Significant Freight & Highway Projects: \$14 billion
 - Charging Formula Program \$5 billion
 - Charging and Fueling Infrastructure Grants \$2.5 billion

IIJA provides DOT with three types of funding:

1. Supplemental Appropriations (\$36.9 Billion in FY 2022)
2. “Contract Authority” for our regular Highway, Transit and Safety Programs (\$73.3 Billion in FY 2022)
3. Funds that are authorized but are subject to appropriations (\$18.5 billion in FY 2022)

Total Potential Funding over 5 years includes:

| | |
|---------------------|--------------------|
| FHWA: \$365 billion | NHTSA: \$8 billion |
| FTA: \$107 billion | FMCSA: \$5 billion |
| FRA: \$102 billion | MARAD: \$2 billion |
| FAA: \$25 billion | OST: \$43 billion |

The following are brief descriptions of selected fraud schemes commonly seen on transportation projects, along with sample “red flag” indicators for each scheme.

It is important to note that the presence of one or more indicators does not prove fraud, nor are the indicators shown all-inclusive for each of the schemes described.

- Bid Rigging and Collusion
- Bribery
- Conflict of Interest
- Kickbacks
- Disadvantaged Business Enterprises (DBE) Fraud
- Materials Overcharging
- Time Overcharging
- Product Substitution
- Quality Control Testing Fraud

Back-room deals are never good...no matter how dark the room is...

Contractors misrepresent the competition against each other when, in fact, they agree to cooperate on the winning bid to increase job profit.

- Unusual bid patterns: too close, too high, round numbers, or identical winning margins or percentages
- Different contractors making identical errors in contract bids
- Bid prices dropping when a new bidder enters the competition
- Rotation of winning bidders by job, type of work, or geographical area
- Losing bidders hired as a subcontractor
- Apparent connections between bidders: common addresses, personnel, or phone numbers
- Losing bidder submits identical line-item bid amounts on nonstandard items

Its not just a few bucks between friends.

A contractor misrepresents the cost of performing work by compensating a government official for permitting contractor overcharges to increase contractor profit.

- Other government inspectors at the job site noticing a pattern of preferential contractor treatment
- Government official having a lifestyle that exceeds their salary
- Contract change orders lack sufficient justification
- Oversight officials socializing with, or having business relationships with contractors or their families

Do I need to let anyone know about my other interests?

A contracting or oversight official misrepresents that he or she is impartial in business decisions when they have an undisclosed financial interest in a contractor or consultant who inflates the job cost to the Government.

- Government official disclosing confidential bid information to a contractor or assisting the contractor in preparing the bid
- Unexplained or unusual favoritism towards a particular contractor or consultant
- Close socialization with or acceptance of inappropriate gifts, travel, or entertainment from a contractor
- Employee discusses employment with a current or prospective contractor or consultant
- Vendor or consultant address is incomplete or matches employee's address

Because they will give, doesn't mean you should take...

A contractor or subcontractor misrepresents the cost of performing work by secretly paying a fee for being awarded the contract and therefore inflating the job cost to the government.

- Unexplained or unreasonable limitations on the number of potential subcontractors contracted for bid or offer
- Continuing awards to subcontractors with poor performance records
- Non-award of subcontracts to lowest bidder
- Lack of separation of duties between purchasing, receiving, and storing
- Non-qualified and/or unlicensed subcontractors working on prime contracts
- Purchasing employees maintain a standard of living exceeding their income

Don't take advantage of the disadvantages...

In disadvantaged business enterprises schemes, a contractor misrepresents who performed contract work in order to appear to be in compliance with contract goals for involvement of minority or women-owned businesses.

- Minority owner lacking background, expertise, or equipment to perform subcontract work
- Employees shuttling back and forth between prime contractor and minority-owned business payrolls
- Business names on equipment and vehicles covered with paint or magnetic signs
- Orders and payment for necessary supplies made by individuals not employed by minority-owned business
- Prime contractor facilitated purchase of minority-owned business
- Minority-owned business owner never present at job site
- Prime contractor always uses the same minority-owned business

Dishonest contractors think you aren't checking the bills...

In materials overcharging schemes, a contractor misrepresents how much construction material was used on the job and is then paid for excess material to increase job profit.

- Discrepancies between contractors-provided quantity documentation and observed data, including yield calculations
- Refusal or inability to provide supporting documentation
- Contractor consistently loading job materials into equipment away from inspector oversight
- Truck weight tickets or plant production records with altered or missing information
- Photocopies of quantity documentation where originals are expected
- Irregularities in color or content of weight slips or other contractor documents used to calculate pay quantities

What's a couple of hours here or there?

In a time-overcharging scheme, a consultant misrepresents the distribution of employee labor on jobs in order to charge for more work hours or a higher overhead rate, to increase profit.

- Unauthorized alterations to timecards and other source records
- Billed hours and dollars consistently at or near budgeted amounts
- Timecards filled out by supervisors, not by employees
- Photocopies of timecards where originals are expected
- Inconsistencies between a consultant's labor distribution records and employee timecards

Maybe it's not quite what you asked or paid for...

In product substitution schemes, a contractor misrepresents the product used in order to reduce costs for construction materials.

- Any mismarking or mislabeling of products and materials
- Contractor restricting or avoiding inspection of goods or service upon delivery
- Contractor refusing to provide supporting documentation regarding production or manufacturing
- Photocopies of necessary certification, delivery, and production records where originals are expected
- Irregularities in signatures, dates, or quantities on delivery documents
- High rate of rejections, returns, or failures
- Test records reflect no failures or a high failure rate, but contract is on time and profitable
- Unsigned certifications

The tests are mostly right, nobody will know...

In quality control testing schemes, a contractor misrepresents the results of quality control (QC) tests to falsely earn contract incentives or to avoid production shutdown in order to increase profits or limit costs.

- Contractor insisting on transporting QC samples from the construction site to the lab
- Contractor employees regularly taking or labeling QC samples away from inspector oversight
- Contractor not maintaining QC samples for later quality assurance (QA) testing
- Contractor challenging results, or attempting to intimidate QA inspectors who obtain conflicting results
- Photocopies of QC test results where originals are expected
- Alterations or missing signatures on QC test results



What is a CLAIM?

Any request for Government money or property:

- ☐ Bills and Invoices (including electronic claims) for services or goods.
- ☐ Progress payment requests
- ☐ Loan applications
- ☐ Grant applications/draw downs

Knowingly makes any False, Fictitious, or Fraudulent **Claims** Against the United States

What makes a claim “FALSE?”

A claim is false if it seeks money to which the claimant is not entitled:

- False statement or omission of material information from application or payment request
- Ineligible for contract or program
- Billing for goods not provided or services not rendered
- Overcharging for goods or services
- Defective pricing or products

What does “KNOWINGLY” mean?

- Actual knowledge
- Reckless disregard of the truth
- Deliberate ignorance
- Specific intent to defraud is not required

If a person is ... violating or about to violate [the mail fraud, wire fraud, or fraud conspiracy statute,] the Attorney General may commence a civil action in any Federal court to enjoin such violation.

- Purpose: To stop ongoing fraud schemes and prevent dissipation of proceeds
- Mechanism: Stand-alone civil case separates from criminal prosecution.
- Standard: Depending on district, either probable cause or preponderance standard for a temporary restraining order.
- Discovery: If an indictment has been returned, discovery is governed by the Criminal Rules.

| | |
|----------------------|---|
| 18 USC § 201 | Bribery |
| 18 USC § 207 & 208 | Conflict of Interest |
| 18 USC § 209 | Gratuities |
| 18 USC § 286 & 287 | False Claims and Conspiracy to Present False Claims |
| 18 USC § 371 | Conspiracy to Defraud the U.S. |
| 18 USC § 641 | Theft of Government Property |
| 18 USC § 666 | Theft or Bribery Concerning Programs Receiving Federal Funds |
| 18 USC § 1001 | False Statements |
| 18 USC § 1028A | Aggravated Identity Theft |
| 18 USC § 1031 | Major Fraud against the United States |
| 18 USC § 1040 | Fraud in Connection with an Emergency (POTUS declared on 3/13/2020) |
| 18 USC § 1341 | Mail Fraud |
| 18 USC § 1343 & 1349 | Wire Fraud & Conspiracy to Commit Wire Fraud |
| 18 USC § 1344 | Bank Fraud |
| 18 USC § 1348 | Securities Fraud |
| 18 USC § 1519 | Obstruction of Justice |
| 18 USC § 1505 | Obstruction of Proceedings before an Agency or Department |
| 18 USC § 1510 | Obstruction of Criminal Investigation |
| 18 USC § 1519 | Destruction, alteration, or falsification of records in Federal investigations and bankruptcy |
| 18 USC § 1621 | Perjury |

18 U.S.C. § 1040 - Fraud in Connection with Emergency

Criminalizes any scheme or material false statement involving any benefit authorized, disbursed, or paid in connection with a major disaster declaration.

Maximum penalty is 30 years' imprisonment.

The American Recovery and Reinvestment Act (ARRA)

ARRA was signed into law by the President in February 2009 to jumpstart the U.S. economy, create or save millions of jobs and address national needs—while supporting unprecedented levels of transparency, oversight and accountability.

New Jersey Scrap Metal Company Officials Ordered To Pay \$25.4 Million in Restitution

This investigation was predicated upon information received from DOL-OIG concerning allegations of fraud being committed by Cinelli Iron & Metal Co. (CIMCO) on various federally funded construction projects. CIMCO held multiple contracts with DOT grantees, including MTA, PANYNJ, and NJ Transit.

Generally, CIMCO transports scrap metal from jobsites, weighs the metal, then purchases it from the contracting agencies based on weight and later resells scrap metal. The allegation indicated that CIMCO fraudulently under-reported the weight of scrap metal in order to pay less than the contractually obligated amount, including at MTA's ARRA-funded 2nd Avenue Subway construction project.

The investigation concluded that between approximately 1999 and 2016, CIMCO and those named above employed fraudulent business practices when dealing with their customers that resulted in paying less than the true amount owed. CIMCO then resold the scrap metal at a profit. DOT-OIG deployed extensive special investigative techniques throughout this investigation such as search warrants, subpoenas, and consensual electronic recordings.

In total, four Defendants were sentenced to the following:

- 69 months of incarceration
- 16 months of home detention
- 9 years of supervised release
- 5 years of probation
- \$351,052 in fines and forfeiture
- **\$25.4 million in restitution** (paid to 59 identified victims of the fraudulent scheme).

FTA instituted 5 suspensions and subsequently debarred CIMCO and 3 Defendants for a period of 3 years.

HD Supply Waterworks To Pay Nearly \$5 Million To Resolve DBE Contract Fraud Allegations

On August 11, 2015, HD Supply Waterworks, Ltd. (Waterworks) agreed to pay \$4.9M under the civil False Claims Act. Waterworks is the nation's largest supplier of water, sewer, fire protection, and storm drain products. The settlement resolves allegations that Waterworks participated in a scheme to defraud the federal DBE program.

It was alleged that various prime contractors falsely represented to contracting authorities that they were utilizing American Indian Builders & Suppliers, Inc. (AIB), a now-defunct DBE, as a subcontractor on federally-funded projects. In reality, these primes were negotiating with and obtaining supplies from Waterworks. Waterworks invoices were passed through AIB, with a mark-up, to the prime contractors to make it appear AIB had completed the work. One of the impacted projects was the \$6.38 million NYS-DOT Bridge Avenue Bridge Replacement Project in Cohoes, New York, funded by ARRA.

According to the USAO, this civil settlement is the largest of its kind involving a third-party supplier in a DBE fraud case.



“It’s elementary my dear Watson...”

Fraud is deliberate deception to secure an unfair gain.

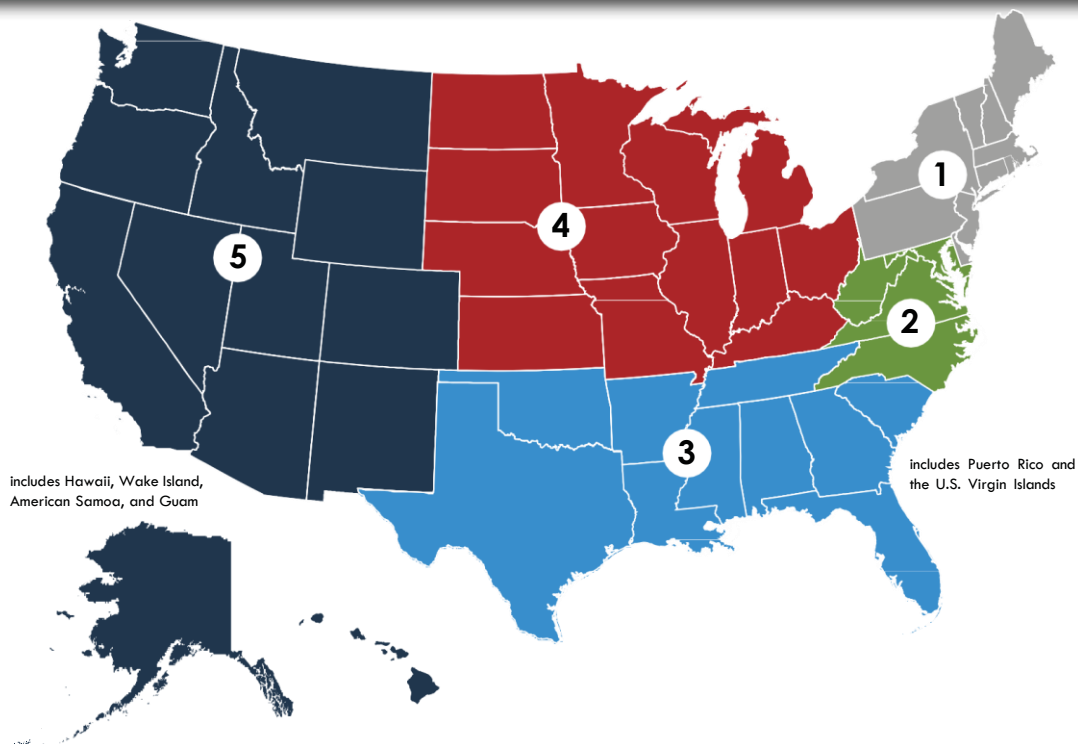
**Recognize and Report Fraud in
Federally Funded Programs,
Contracts, and Grants**

(800) 424-9071

*U.S. Department of Transportation
Office of Inspector General*

▪ DOT-OIG Hotline

- Email: hotline@oig.dot.gov
- Mail: DOT Inspector General, 1200 New Jersey Ave SE, West Bldg. 7th Floor, Washington, DC 20590
- Contractors may also use our online FAR Disclosure Form to report criminal or civil violations in connection with a Federal contract



Contact Information for Special Agents-in-Charge

1 - Northeastern Region  **Chris Scharf**
(617) 429-1881

2 - Mid-Atlantic Region  **Craig Miles**
(202) 366-7109

3 - Southern Region  **Todd Damiani**
(404) 562-3875

4 - Midwestern Region  **Andrea Kropf**
(312) 353-0485

5 - Western Region  **Cissy Tubbs**
(562) 467-5372

HQ Operations  **Justin Bidwell**
(202) 744-2634

Data Analytics and Computer Crimes  **Bradley Dunn**
(202) 366-1811



DOT OIG Hotline:

hotline@oig.dot.gov / 1-800-424-9071

Questions





Mid-Atlantic Regional Investigations

Maryland, Virginia, Washington D.C., West Virginia, North Carolina

Procurement and Grant Fraud Investigations

DOT-OIG protects Federal transportation dollars by investigating fraud by grantees, grant recipients, and DOT contractors. In addition, this program helps ensure a level economic playing field for American workers and dis-advantaged business enterprises (DBE) in the distribution of Federal transportation funds. The types of frauds typically seen in DOT procurements and grants include:

- Bribery and Corruption
- Bid Rigging & Collusion
- Embezzlement & Theft
- False Claims
- Buy America
- Labor and Materials Over-charging
- DBE Fraud
- Product Substitution
- Quality-Control Testing

Transportation Safety Investigations

DOT-OIG investigates crimes where death or serious bodily injury has or is likely to occur. These types of investigations typically involve parties that egregiously violate DOT's safety regulations and statutes. Our safety investigations focus on three sub-priority areas:

Aviation Safety Investigations

- Counterfeit or substandard aircraft parts
- Falsified aircraft and aircraft parts maintenance records
- False certifications involving pilot and mechanic licensing and maintenance records
- Aircraft laser incidents
- Unlawful operation of Unmanned Aircraft Systems (UAS) or "drones"

Motor Carrier Safety Investigations

- Falsified drivers' hours-of-service logs
- Fraudulently or corruptly obtained commercial drivers' licenses
- Falsified truck or bus maintenance records
- Fraud in testing commercial drivers for drug and alcohol abuse

Hazardous Materials Investigations

- Illegal and undeclared shipment of hazmat in all modes of transportation
- Falsification of pipeline maintenance and inspections
- Testing of Pressurized Cylinders
- Vandalism to Interstate pipelines and pipeline facilities

Consumer and Workforce Fraud Investigations

The goal of this program is to protect American consumers and workers from fraud in connection with Federal Motor Carrier Safety Administration economic regulatory programs, such as household goods and motor carrier broker fraud schemes.

Craig Miles, Special Agent-in-Charge
U.S. Department Of Transportation, Office of Inspector General
1200 New Jersey Avenue SE, Washington DC 20590
(202) 763-3539 | Craig.Miles@oig.dot.gov



Fraud & Safety Hotline

hotline@oig.dot.gov | (800) 424-9071
hotline@oig.dot.gov/hotline

DOT Modal Administrations

Federal Aviation Administration
Federal Highway Administration
Federal Motor Carrier Safety Administration
Federal Railroad Administration
Federal Transit Administration
Maritime Administration
National Highway Traffic Safety Administration
Office of the Secretary
Pipeline and Hazardous Materials Safety Administration
Saint Lawrence Seaway Development Corporation



www.oig.dot.gov

OFFICE OF INSPECTOR GENERAL
U.S. Department of Transportation
1200 New Jersey Ave SE
Washington, DC 20590

Basic Requirements

Presenters:

Sherre Ritenour, BMRA Subject Matter Expert

- Legal
- Financial Management and Capacity
- Technical Capacity – Award Management
- Technical Capacity – Project Management

Alan Stapler, BMRA Subject Matter Expert

- Satisfactory Continuing Control
- Maintenance
- Procurement

Sandy Frazier, BMRA Subject Matter Expert

- Drug-Free Workplace Act
- Drug & Alcohol Program

Basic Legal Requirement

The recipient must promptly notify MARAD of legal matters and additionally notify the U.S. Department of Transportation (US DOT) Office of the Inspector General (OIG) of any instance relating to false claims under the False Claims Act or fraud. Recipients must comply with restrictions on lobbying requirements.



Legal matters that could affect MARAD

The recipient is required to promptly notify the MARAD Chief Counsel or the MARAD Regional Counsel, for the region in which the recipient is located, of any current or prospective legal matters that may affect the Federal government. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming of the Federal government as a party to litigation or a legal disagreement in any forum for any reason.

*If a current or prospective legal matter that may affect the Federal Government emerges, the **Recipient must promptly notify the MARAD Grants Officer.***

False Claims Act or Fraud, waste or abuse

Recipients must promptly notify the US DOT Inspector General and MARAD Grants Officer if the recipient has knowledge that a principal, official, employee, agent, or third-party participant of the recipient, or other person potentially may have submitted a false claim under the False Claims Act, 31 U.S.C. §3729 et seq., or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Federal assistance.

CFR Definitions of False Claims: [eCFR :: 32 CFR 750.23 -- Definitions.](#)

Lobbying Activities

Recipients and subrecipients are prohibited from using appropriated Federal funds to lobby for Federal funds. If the recipient or subrecipient uses local funds to lobby for MARAD related purposes, recipients and subrecipients must file the OMB Standard Form LLL with MARAD.

2 CFR Part 200 Governing Directive:

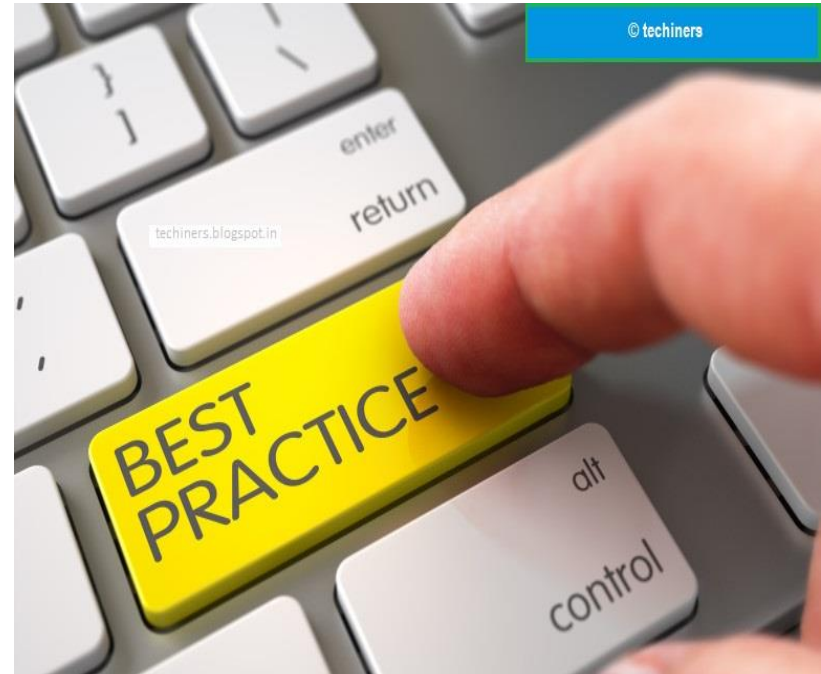
- eCFR :: 49 CFR 20.100 -- Conditions on use of funds
- eCFR :: 2 CFR 200.450 -- Lobbying.
- eCFR :: 2 CFR 200.331 -- Subrecipient and contractor determinations.



Basic Financial Requirement

The recipient must:

- have written financial policies and procedures
- show an organizational structure that defines, assigns, and delegates fiduciary authority
- have financial management systems in place to manage, match, and charge only allowable costs to the award
- conduct Single Audits, as required by 2 CFR part 200
- provide financial oversight of subrecipients.



[Federal Grant Assistance | MARAD \(dot.gov\)](https://www.marad.dot.gov/)

Basic Requirements

- Written Financial Management Policies and Procedures
- Internal Controls - to safeguard against waste, loss, and misuse of MARAD federal funds.
- Organizational structure- clearly define, assign, and delegate appropriate authority for financial duties.
- Financial Management System- for preparing reports, trace funds adequately.
- Eligible Expenses

Basic Requirements

- Single Audit
 - Submit to the Federal Audit Clearinghouse (FAC) and MARAD
 - Address findings
- Local Share
 - Identify and confirm eligibility
- Financial Oversight of Subrecipient(s)
 - Ensure compliance

Basic Requirements

- Recipient must have detailed written financial management policies and procedures in place for managing Federal awards, establishing a system of internal controls, that safeguards against waste, loss, and misuse of MARAD federal funds.

§ 200.300 Statutory and national policy requirements.

[eCFR :: 2 CFR 200.300 -- Statutory and national policy requirements.](#)

eCFR :: 2 CFR Part 200 Subpart D -- Post Federal Award Requirements

| Policy/Procedure | CFR Reference |
|--|---|
| Allowable Cost | <u>2 CFR Part 200.302</u> <u>2 CFR Part 200 Subpart E</u> |
| Cash Management & Payment | <u>2 CFR Part 200.302</u> <u>2 CFR Part 200.305</u> |
| Safeguarding of funds | <u>2 CFR Part 200.302</u> |
| Recording and Identification of assets | <u>2 CFR Part 200.302</u> |
| An audit, testing or review of program for internal control system | <u>2 CFR Part 200.303</u> |
| Financial oversight of subrecipient, if applicable | <u>2 CFR Part 200.303</u> <u>2 CFR Part 200.329</u> <u>2 CFR Part 200.332</u> |
| Required financial reporting, review, and approval | <u>2 CFR Part 200.328</u> |
| Record retention | <u>2 CFR Part 200.334</u> |
| Accounting software being used | <u>2 CFR Part 200.336</u> |

Basic Requirement

The recipient's organizational structure must clearly define, assign, and delegate appropriate authority for all financial duties and require that those duties are:

- carried out by properly qualified personnel
- segregated within the organization
- subject to review to ensure that adequate internal checks and balances exist

Basic Requirement

Recipients must have financial management systems in place to accurately account for and report on Federal funds.

BASIC REQUIREMENT

Recipients may only request necessary and eligible Federal funds from MARAD. Requests for reimbursement must be tracked by activity line item (ALI) and fully supported by backup documentation.

Request Reimbursement (SF-270) - The submission of this form along with all supporting documentation is a requirement for all reimbursement requests. Only the submission of reimbursement requests are accepted. **MARAD does not accept requests for Advance payments.**

<https://www.maritime.dot.gov/sites/marad.dot.gov/files/2022-03/SF270-V1.0%20-%201.31.2025.pdf>

<https://www.maritime.dot.gov/grants-finance/federal-grant-assistance/sf-270-request-advance-or-reimbursement>

BASIC REQUIREMENT

Non-Federal entities that expend \$750,000 or more in Federal awards in their fiscal year are required to conduct an independent Single Audit, submit required documentation timely, and resolve identified issues.

Governing Directive

[eCFR :: 2 CFR Part 200 Subpart F -- Audit Requirements](#)

BASIC REQUIREMENT

Recipients must have the financial capacity to carry out their project(s).

- Recipient must certify that it has the legal, financial and technical capacity to carry out the project(s)
- Recipient must have a multiyear financial plan (3-5 years) for operating and capital revenues and expenses to implement MARAD awards
- All local share used to match MARAD awards must come from non-US DOT sources, including Federal Highway Administration (FHWA) Tribal Transportation Program funds. No MARAD program funds can be used as a source of local match for other MARAD programs, even when the funds are contract revenue. Federal loan programs such as Transportation Infrastructure Finance and Innovation Act (TIFIA) or Railroad Rehabilitation & Improvement Financing (RRIF) count as Federal sources even though they are often repaid with local or state funds.
- Notice of Funding Opportunities for DOT Infrastructure for Rebuilding American (INFRA Program Section C.2 – Cost Sharing or Matching

Governing Directives

2 CFR Part 200.306 Cost sharing or matching

For all Federal awards, any shared costs or matching funds and all contributions, including cash and third-party in-kind contributions, must be accepted as part of the non-Federal entity's cost sharing, or matching when such contributions meet all of the following criteria:

1. Are verifiable from the non-Federal entity's records
2. Are not included as contributions for any other Federal award
3. Are necessary and reasonable for accomplishment of project or program objectives
4. Are allowable under Subpart E of this part
5. Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs
6. Are provided for in the approved budget when required by the Federal awarding agency; and
7. Conform to other provisions of this part, as applicable.

BASIC REQUIREMENT

The recipient is responsible for ensuring that subrecipients have financial management systems that meet standards for financial reporting, accounting records, internal control, budget control, allowable cost, source documentation, and cash management; comply with requirements regarding the use of indirect cost when reimbursement is sought from a federal award program; and complete annual independent Single Audits if the subrecipients expended \$750,000 or more in Federal awards in a year.

Governing Directive

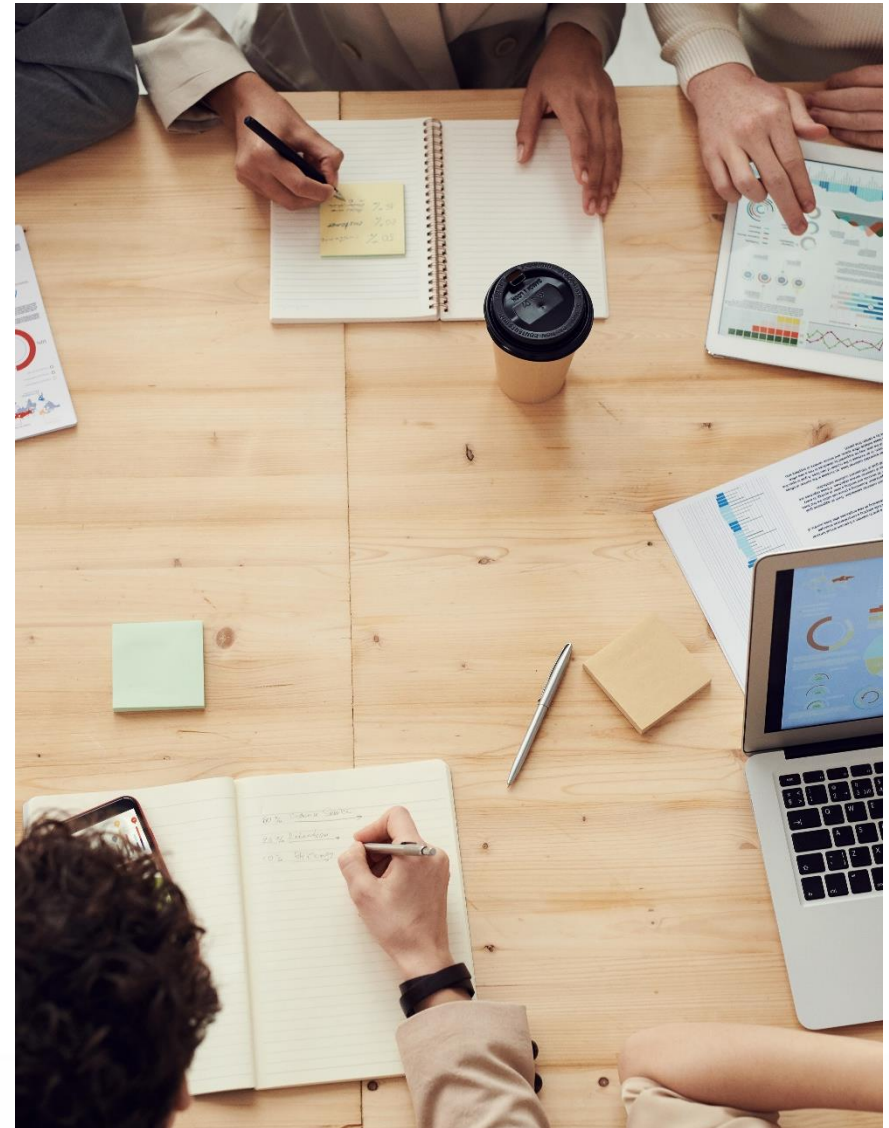
eCFR :: 2 CFR 200.332 -- Requirements for pass-through entities.



Basic Requirement

The recipient must:

- report progress of all MARAD funded projects to MARAD
- report on time
- closeout awards in accordance with period of performance



BASIC REQUIREMENT

Recipients are required to submit Quarterly Reports that discuss progress toward project objectives and any potential problem areas.

*Quarterly Reports are the primary written communication between recipients and MARAD on the progress of the projects in an award. 2 CFR part 200 subpart D detail the information that, at a minimum, must be included in these reports. Reporting on **operating assistance** is limited to the estimated and actual date when funding has been expended.*

Governing Directive

eCFR :: 2 CFR 200.329 -- Monitoring and reporting program performance.

BASIC REQUIREMENT

Federal Financial Report (FFR) SF-425 – The Federal Financial Report is a cumulative report of all financials transactions during a reporting period. It is required by the Office of Management and Budget (OMB). Recipients must report progress to MARAD via timely submittal of FFRs

- Submit reports for each open award within 30 days of the end of the reporting period.
- Reports must be submitted for all active/executed awards, even if no activity occurred on those awards since the last report.
- Reports are submitted based on the reporting frequency established by MARAD. The reporting frequency depends on award program, award amount, recipient location, project type, and risk.

Governing Directive

eCFR :: 2 CFR 200.328 -- Financial reporting. eCFR :: 2 CFR 200.329 -- Monitoring and reporting program performance.

BASIC REQUIREMENT

Reporting Requirements:

- The submission of FFRs will be on a quarterly.
- The following reporting period end dates shall be used for reports: 3/31, 6/30, 9/30, 12/31.
- A final FFR shall be submitted at the completion of the award agreement. For final FFRs, the reporting period end date shall be the end date of the project or grant period.
- Quarterly reports shall be submitted no later than 30 days after the end of each reporting period. Annual reports shall be submitted no later than 90 days after the end of each reporting period. Final reports shall be submitted no later than 90 days after the project or grant period end date.

BASIC REQUIREMENT

The recipient must expend awards timely and close out projects and awards when project activity is completed.

- MARAD expects projects to be completed within a reasonable, specified time and as scheduled in the award agreement and updated in progress reports.
- MARAD funded projects should be implemented within two to three years of award approval. Recipients should take into account the status of current awards before awarding a subrecipient an award for a new project.
- The recipient must initiate award closeout with subrecipients no later than 90 or 120 days after the end of the period of performance or when the award's scope of work is completed. A final FFR, Quarterly Reports, and reconciled budget, are required at the time of closeout. It is not necessary to wait for the single audit or final indirect cost rates before closing an award.

Governing Directive

eCFR :: 2 CFR 200.344 -- Closeout.

<https://cms.marad.dot.gov/sites/marad.dot.gov/files/docs/ports/federal-grant-assistance/1151/sf-425instructions.pdf> (for reference only. Not to be included here)

MARAD Additional Resources for Federal Grant Reporting Requirements

<https://www.maritime.dot.gov/grants/federal-grant-assistance/federal-grant-assistance>

- **America's Marine Highway Program**

<https://www.maritime.dot.gov/grants/marine-highways/marine-highway>

- **Small Shipyard Grants**

<https://www.maritime.dot.gov/grants-finances/small-shipyard-grants>

- **Federal Ship Financing Program (Title XI)**

<https://www.maritime.dot.gov/grants/title-xi/federal-ship-financing-program-title-xi>

- **Construction Reserve Fund**

<https://www.maritime.dot.gov/grants/construction-reserve-fund>

- **Capital Construction Fund**

<https://www.maritime.dot.gov/grants/capital-construction-fund>

- **Port Infrastructure Development Grants**

<https://www.maritime.dot.gov/PIDPgrants>

Basic Requirement

- Recipients must enter into an agreement with each subrecipient that includes all the information required by 2 CFR Part 200.332
- States must document and follow a public involvement process for the development of the long-range statewide transportation plan and State Transportation Improvement Program (STIP).



Basic Requirement

Any subrecipient in receipt of an award or contract exceeding \$100,000 is subject to the same disclosure requirements as the recipient (See Legal review area for explanation of lobbying certification requirements). The recipient must obtain an OMB Standard Form LLL, or a quarterly report update from a subrecipient for an event that should be reported. Obtaining the certification with annual certifications and assurances from subrecipients with one signature for all the certifications and assurances meets the requirement.

Governing Directive

eCFR :: 49 CFR 20.110 -- Certification and disclosure.

BASIC REQUIREMENT

Recipients must:

- enter into an agreement with each subrecipient. Agreements must state the terms and conditions of assistance and include information required by 2 CFR part 200.332
- obtain required certifications from subrecipients
- report in the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) on subawards
- ensure subrecipients comply with the terms of the award

Governing Directive

eCFR :: 2 CFR 200.332 -- Requirements for pass-through entities.

Basic Requirement

- Each recipient is required to ensure, to the best of its knowledge and belief, that none of its subrecipients are suspended, debarred, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements.
- For each subrecipient agreement expected to equal or exceed \$25,000, recipients must verify that the subrecipient is not excluded or disqualified by:
 - Checking SAM exclusions (at SAM.gov); or
 - Collecting a certification; or
 - Adding a clause or condition to the covered transaction.

(Obtaining an annual certifications and assurances document from subrecipients meets the requirement.)

Governing Directive

eCFR :: 2 CFR 180.300 -- What must I do before I enter into a covered transaction with another person at the next lower tier?

eCFR :: 2 CFR 180.310 -- What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

BASIC REQUIREMENT

Recipients must:

- evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward
- develop a subrecipient monitoring program to ensure that the subaward is used for authorized purposes in compliance with Federal statutes, regulations, and the terms and conditions of the subaward, and that subaward performance goals are achieved.

Governing Directive

[eCFR :: 2 CFR 200.332 -- Requirements for pass-through entities.](#)



Recipients must be able to implement MARAD-funded projects in accordance with the award application, MARAD Grant Agreement, and applicable laws and regulations using sound management practices.

BASIC REQUIREMENT

Recipients must:

- ensure project schedules, budgets, and performance objectives are achieved
- provide technical inspection and supervision of all projects in progress
- ensure conformity and compliance with all applicable Federal, state, and local regulations
- obtain all necessary approvals prior to incurring costs.

Governing Directive

[Grants Management Process | MARAD \(dot.gov\)](#)

[eCFR :: 2 CFR 200.300 -- Statutory and national policy requirements.](#)

BASIC REQUIREMENT

- A recipient using their own labor force on capital improvement projects is required to develop and maintain on file a force account plan and submit to MARAD a force account justification prior to incurring costs when the project is greater than \$1,000,000 but less than \$10,000,000.
- For projects greater than \$10,000,000, the recipient must submit a force account plan and justification to MARAD and obtain MARAD approval of the force account plan before incurring costs.

Governing Directive

eCFR :: 2 CFR Part 200 -- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

What is a Force Account

A Force Account work :

- is the use of a recipient labor force as a capital expense to carry out a capital project.
- may consist of design, construction, overhaul, inspection, and construction management activities, if eligible for reimbursement as a capital expense under the Award.
- does not include Award or project administration activities that are otherwise direct project costs.
- also does not include preventive maintenance or other items under the expanded definition of capital that are traditionally not a capital expense.
- requires 2 CFR part 200 is followed, especially for charging expendable property to force account projects and making sure that allowable costs are assigned to the correct activity code.

Force Account Continued

Based on the amount of Force Account work, a recipient may be required to submit a justification to use force account and/or the Force Account Plan for MARAD approval.

- ☐ Force account work less than \$1,000,000 can be performed without justification or a force account plan.
- ☐ Force account work \$1,000,000 or greater but less than \$10,000,000 requires submission of a force account justification prior to Award. A recipient must maintain a force account plan in its files prior to incurring costs.
- ☐ Force account work at \$10,000,000 or greater requires submission of a force account justification, as well as prior MARAD approval of the force account plan.

Note that a force account plan is prepared at the project level; it, therefore, may cover multiple Grants, Cooperative Agreements, or Amendments. It may be prepared prior to or after Award but must be in place before incurring costs.

Force Account Continued

One of four conditions may warrant the use of force account work. These are:

1. Cost savings.

A justification documentation must include the following information to be justified based on cost savings:

- A comparison of the present worth of the estimated cash drawdown for both the force account and private sector contract options;
- The current interest rate paid on one-year Treasury Bills as the discount rate;
- The cost of preparing documents, cost of administration, and inspection, cost of labor, materials and specialized equipment, cost of overhead, and profit for private contract;
- Unit prices for labor; materials and equipment; overhead; and profit, if applicable for private contract;
- Certification that costs presented are fair and reasonable; and
- The present value calculation based on the midpoint of construction, and if the time for completion of the work differs for force account and a private sector contract, include an estimate of the cost of not using the completed improvement in the present worth calculation.

Force Account Continued

2. Exclusive expertise.

The justification documentation must be based on exclusive expertise and must include documentation equivalent to a sole source justification stating the basis for a determination that no private-sector contractor has the expertise to perform the work.

3. Safety and efficiency.

The justification documentation must include explanation of safety considerations and efficiency. In emergency situations where the recipient uses its own workforce, the recipient may submit a waiver to the Emergency Relief docket.

4. Union Agreement.

The justification documentation must be based on exclusive expertise and must include documentation equivalent to a sole source justification stating the basis for a determination that no private-sector contractor has the expertise to perform the work.

BASIC REQUIREMENT

The recipient must provide technical inspection and supervision of contractors and lessees to ensure performance objectives are achieved and in compliance with MARAD requirements.

Recipients must have an ongoing system to ensure that contractors and lessees adhere to Federal requirements. While MARAD does not prescribe specific monitoring activities for ensuring compliance, it does expect the recipient to look behind certifications and assurances, contracts, and agreements. MARAD relies on each recipient to develop and implement effective systems for monitoring and ensuring compliance.

Suggested Actions recipient would take:

- Review contract terms and statement of work
- Prepare and review monthly, quarterly, or annual reports
- Conduct meetings
- Conduct site visits

BASIC REQUIREMENT

The recipient must provide technical inspection and supervision of projects undertaken by subrecipients.

A recipient is responsible for Federal assistance that is passed through to a subrecipient. The recipients' responsibilities include, but are not limited to, providing, directly or by contract, adequate technical inspection, and supervision of all subrecipient projects. Monitoring mechanisms may include:

- Contracting with a consultant to provide project management oversight
- Reviewing requests for proposals and contracts
- Reviewing plans and drawings
- Conducting periodic site inspections
- Requiring progress reports
- Attending project review meetings
- Withholding payment of a portion of the award until final inspection and acceptance of the project

A recipient must ensure that subrecipients comply with force account requirements.

Additional Helpful Links

Uniform Guidance (2 CFR 200): <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1>

Grants.Gov: <https://www.grants.gov/>

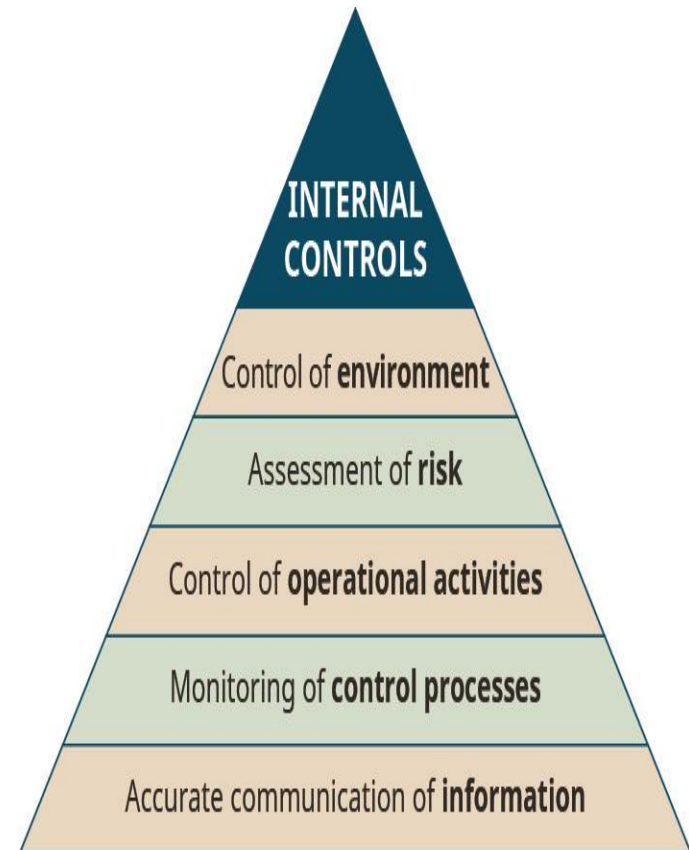
Federal Audit Clearinghouse: <https://facweb.census.gov/uploadpdf.aspx>

Single Audit Regulations: 2 CFR 200 Subpart F-(Section 500)
<https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-F>



Basic Requirement

The recipient must ensure that MARAD -funded property will remain available to be used for its originally authorized purpose throughout its useful life until disposition.



BASIC REQUIREMENT

For MARAD-funded real property purchased under an award made on or after December 26, 2014, the recipient must maintain adequate records on the status of real property and submit required reports to MARAD

Governing Directive

[eCFR :: 2 CFR 200.311 -- Real property.](#)

[eCFR :: 2 CFR 200.330 -- Reporting on real property.](#)

INFORMATION NEEDED FOR REAL PROPERTY INVENTORY

- ✓ Property location/physical address
- ✓ Use and condition of the property
 - ☐ Summary of conditions on the title
- ✓ Brief description of improvements, expansions, and retrofits
- ✓ Corresponding useful life for the asset(s)
- ✓ Date placed in service
- ✓ Original acquisition cost
 - ☐ Sources of funding
 - ☐ Federal and non-federal participation ratios
 - ☐ Federal Award Information Number (FAIN)
 - ☐ Appraised value and date
 - ☐ Anticipated disposition or action proposed
 - ☐ Date of disposal
 - ☐ Sale price
 - ☐ If excess property – provide reason

BASIC REQUIREMENT

For MARAD-funded excess real property purchased under an award made before December 26, 2014, the recipient must prepare and update an excess property inventory and utilization plan?

- For Awards and Cooperative Agreements (and funding increments to existing Awards and Cooperative Agreements) awarded before December 26, 2014, recipients are required to prepare and maintain an inventory and utilization plan for all property that is no longer needed to carry out any transit program.

Governing Directive

[eCFR :: 2 CFR 200.311 -- Real property.](#)

Excess Real Property Inventory & Utilization Plan Required Elements

- ✓ Location
- ✓ Summary of any conditions on the title
- ✓ Original Acquisition Cost
- ✓ Federal participation ratio
- ✓ MARAD award number
- ✓ Appraised value and date
- ✓ Brief description of improvements
- ✓ Current use
- ✓ Anticipated disposition or action proposed

BASIC REQUIREMENT

The recipient must follow MARAD requirements for incidental use of real property.

Incidental use is defined as the authorized use of real property for purposes other than the core usage requirements of such property. Examples include the lease of space for retail or other uses, or the lease of air rights over a MARAD facility.

Governing Directive

eCFR :: 2 CFR 200.311 -- Real property.

BASIC REQUIREMENT

The recipient must make appropriate efforts to use, lease, or dispose of idle facilities?

All MARAD-funded real property, including facilities, is expected to be used for the originally authorized purpose throughout the useful life of the property as long as needed for that purpose. Idle facilities are those facilities that are completely unused and excess to the recipient's current needs. This is different from idle capacity which is the unused capacity of partially used facilities. Cost of idle facilities such as maintenance, repair, housing, rent, and other related costs including insurance and depreciation are unallowable, except to the extent that:

BASIC REQUIREMENT

1. they are necessary to meet workload requirements which may fluctuate, and they are allocated appropriately to all programs; or
2. it can be shown that the costs were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under this exception, costs of idle facilities are allowable for a reasonable period, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of the facilities and the justification provided by the recipient for MARAD review and approval.

Governing Directive

Would discuss with MARAD on what actions/steps would be taken to address idle facility

BASIC REQUIREMENT

Is MARAD-funded real property used solely for its originally authorized purpose?

MARAD-funded real property is expected to be used for the originally authorized purpose as long as needed for that purpose. Real property includes land, affixed land improvements, structures, and appurtenances. MARAD has an interest in real property when MARAD funds were used to purchase, construct, improve, or repair the property. During that time, the recipient must not dispose of or encumber its title or other interests in the real property. Recipients are required to notify MARAD when property is removed from the service originally intended at award approval or if property is put to additional or substitute uses.

Governing Directive

[eCFR :: 2 CFR 200.311 -- Real property. \(b\)](#)

BASIC REQUIREMENT

If the recipient disposes of MARAD-funded real property, do you ensure you follow MARAD requirements?

Recipients must follow MARAD requirements for disposition of real property.

Governing Directive

[eCFR :: 2 CFR 200.311 -- Real property.](#) (c) (1, 2, 3)

BASIC REQUIREMENT

Does the recipient have flood insurance for any MARAD-funded buildings located in areas that have been identified as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968?

GOVERNING DIRECTIVE

U.S.C. §4012a (a) Amount and term of coverage

After the expiration of sixty days following December 31, 1973, no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Administrator as an area having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968 [42 U.S.C. 4001 et seq.], unless the building or mobile home and any personal property to which such financial assistance relates is covered by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less: Provided, That if the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan. The requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property.

GOVERNING DIRECTIVE

National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973

(1) State-owned property. Notwithstanding the other provisions of this section, flood insurance shall not be required on any State-owned property that is covered under an adequate State policy of self-insurance satisfactory to the Director. The Director shall publish and periodically revise the list of States to which this subsection applies.

GOVERNING DIRECTIVE

Flood Disaster Protection Act of 1973, Section 3(a)(4)

Financial assistance for acquisition or construction purposes" means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein...

GOVERNING DIRECTIVE

49 CFR 75.14, – State exempt under this part

The following States have submitted applications and adequate supporting documentation and have been determined by the Federal Insurance Administrator to be exempt from the requirement of flood insurance on State-owned structures and their contents because they have in effect adequate State plans of self- insurance: Florida, Georgia, Iowa, Kentucky, Maine, New Jersey, New York, North Carolina, Oregon, Pennsylvania, South Carolina, Tennessee, and Vermont.

BASIC REQUIREMENT

The recipient must maintain control over and maintain inventory records of MARAD-funded equipment?

Governing Directive

eCFR :: 2 CFR 200.313 -- Equipment. (b) (d) (1, 2, 3)

Equipment Inventory Required Data Elements

- ✓ Description
- ✓ Identification number or serial number
- ✓ Title Holder
- ✓ Federal Award Information Number (FAIN)
- ✓ Acquisition date
- ✓ Acquisition Cost
- ✓ Federal participation percentage
- ✓ Location
- ✓ Useful life
- ✓ Use and Condition
- ✓ Disposition data (include date of disposal, sale price, method to determine fair market value)

Written Procedures

- ✓ How often do you conduct physical inventory
- ✓ What procedures have in place to prevent loss, damage or theft of MARAD funded equipment.
- ✓ If incidental use
 - You must have MARAD approval (in writing)
 - Revenues used must continue to support MARAD funded projects

Written procedures if you Lease MARAD funded Asset(s) to other parties

- ✓ If you lease the MARAD funded asset(s) to other entities this must be approved (in writing) by MARAD
- ✓ If you lease the MARAD funded asset(s) to other entities, you must include these required provisions in lease agreements:
 - The lease must be subject to and incorporate by reference the terms and conditions of the Grant or Cooperative Agreement.
 - The federally assisted property shall be operated by the lessee to serve the best interests and welfare of the recipient, lessor, and the public; the terms and conditions for operation of service imposed by the recipient shall be evidenced in a service agreement.

Written procedures if you Lease MARAD funded Asset(s) to other parties – continued -

- ✓ If you lease the MARAD funded asset(s) to other entities, you must include these required provisions in lease agreements:
 - The lessee shall maintain the federally assisted property at a high level of cleanliness, safety, and mechanical soundness under maintenance procedures outlined by the recipient; the recipient, lessor, and/or MARAD shall have the right to conduct periodic maintenance inspections for the purpose of confirming the existence, condition, and the proper maintenance of the federally assisted property.
 - The lease needs to cross reference a service agreement. A default under the lease is a default under the service agreement and vice versa.

BASIC REQUIREMENT

Equipment withdrawn from use and disposed of in accordance with 2 CFR 200 and MARAD requirements.

APPLICABILITY

Non-state recipients

Governing Directive

eCFR :: 2 CFR 200.313 -- Equipment. (b) (c) (1,2,3,4)

REQUIREMENT

The recipient must notify MARAD immediately when any project property is withdrawn from project use prior to the end of its useful life or when any project property is used in a manner substantially different from the representations the recipient made in the award agreement or cooperative agreement for the project.

Disposition of equipment before the end of useful life requires prior MARAD approval.

REQUIREMENT – continued -

Even after the equipment's useful life is expended, MARAD is entitled to its share of the remaining Federal interest (subject to the next paragraph). The Federal interest is the greater of the MARAD share of the straight-line depreciated value (based on years or miles for rolling stock) or the sale price.

Equipment with a unit market value of \$5,000 or less that has reached the end of its useful life requires no MARAD reimbursement. Equipment that has reached the end of its useful life and for which the unit market value exceeds \$5,000 requires reimbursement to MARAD of the proportionate share of the fair market value or the net proceeds of the sale. Net proceeds are the amount realized from the sale of property no longer needed for port operations purposes less allowable deductions for selling and handling expenses (i.e., the recipient may deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses).

REQUIREMENT – Continued –

With prior MARAD written approval, the recipient can use sale proceeds to reduce the gross project cost of future MARAD eligible capital awards. The recipient is expected to record the receipt of the proceeds in its accounting system, showing that the funds are restricted for use in a subsequent capital award, and reduce the liability as the proceeds are applied to one or more MARAD-approved capital awards. The subsequent capital award application should contain information showing MARAD that the gross project cost has been reduced with proceeds from the earlier transaction.

REQUIREMENT – Continued –

With prior MARAD written approval, the recipient can use sale proceeds to reduce the gross project cost of future MARAD eligible capital awards. The recipient is expected to record the receipt of the proceeds in its accounting system, showing that the funds are restricted for use in a subsequent capital award, and reduce the liability as the proceeds are applied to one or more MARAD-approved capital awards. The subsequent capital award application should contain information showing MARAD that the gross project cost has been reduced with proceeds from the earlier transaction.

REQUIREMENT – Continued –

For the disposition of supplies for which there is no port operations use with a total aggregate fair market value that exceeds \$5,000, the recipient must compensate MARAD for its share or transfer the sales proceeds to reduce the gross project cost of another capital project.

If the recipient or a subrecipient receives insurance proceeds when project property has been lost or damaged by fire, casualty, or natural disaster, the recipient must:

- Apply those proceeds to the cost of replacing the damaged or destroyed project property taken out of service, or
- Return to MARAD an amount equal to the remaining Federal interest in the lost, damaged, or destroyed project property. The Federal interest is not dependent on the extent of insurance coverage or on the insurance adjustment received.

BASIC REQUIREMENT

Does the recipient maintain control over MARAD-funded property and ensure that subrecipients use MARAD-funded property for project purposes? Recipients must conduct on-going oversight of subrecipients to ensure that subrecipients properly manage and maintain control of MARAD funded property.

APPLICABILITY

Recipients with subrecipients

Governing Directive

eCFR :: 2 CFR 200.311 -- Real property. (b)

eCFR :: 2 CFR 200.318 -- General procurement standards. (b)

eCFR :: 2 CFR 200.332 -- Requirements for pass-through entities. (d) (1,2) (e)
(1,2,3)



BASIC REQUIREMENT

Recipients must keep federally funded vehicles, equipment, and facilities in good operating condition. Recipients must keep Americans with Disabilities Act (ADA) accessibility features on all equipment and facilities in good operating order.



BASIC REQUIREMENT

Does the recipient have a written maintenance plan(s) for MARAD-funded assets (including vehicles or cargo handling equipment, facilities, and other equipment)?

Governing Directive

eCFR :: 2 CFR 200.313 -- Equipment. (b) (d)

The maintenance plan(s) should also address specific mission critical and safety items, which include, but are not limited to:

- Buildings
- Plumbing systems
- Elevators
- Overhead doors
- Escalators
- Vehicle maintenance lifts
- Parking lots
- Heating and/or air conditioning units
- Right-of-way (guideway, track, ballast, etc.)
- Power substations, etc.
- Electric distribution and control equipment
- Security equipment
- Cranes and related equipment
- Bridges, bulkheads, piers, piles, docks, wharfs, and related marine infrastructure

In the case of rail systems, MARAD's investment often involves the construction of rights-of-way, signals, and other related facilities and equipment. While Federal Railroad Administration (FRA) regulates rail systems and has detailed maintenance requirements for rolling stock, signals, and right-of-way that it enforces with a frequent inspection program, proper maintenance is needed by recipients for those components of the rail system not subject to FRA maintenance requirements, such as maintenance facilities, buildings, and equipment.

BASIC REQUIREMENT

Is the recipient following its program for preventive maintenance inspections and documenting those inspections for MARAD-funded assets?

Recipients that use MARAD assistance to purchase assets must keep those assets in good condition and good operating order.

Governing Directive

eCFR :: 2 CFR 200.313 -- Equipment. (b)

BASIC REQUIREMENT

Does the recipient have a system for tracking warranty issues and does the recipient actively pursue warranty claims?

Recipients must establish procedures for adequately recording, tracking, and pursuing warranty claims.

APPLICABILITY

Non-state recipients with direct control over MARAD-funded assets

Governing Directive

[eCFR :: 2 CFR 200.313 -- Equipment. \(b\) \(d\)](#)

BASIC REQUIREMENT

Do recipients have an effective mechanism for monitoring subrecipients', contractors', and lessees' maintenance activities?

States must develop maintenance requirements for subrecipients, contractors, and lessees for MARAD-funded vehicles/vessels. Other recipients must require that subrecipients, contractors, and lessees meet MARAD's maintenance requirements.

APPLICABILITY

Recipients with subrecipients, contractors, and lessees with MARAD-funded assets

Governing Directive

eCFR :: 2 CFR 200.313 -- Equipment. (b) (d)

eCFR :: 2 CFR 200.318 -- General procurement standards. (b)

eCFR :: 2 CFR 200.332 -- Requirements for pass-through entities. (d) (1,2) (e) (1,2,3)



BASIC REQUIREMENT

Recipient must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, and conform to applicable Federal law and the standards identified in 2 CFR Part 200.



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Current Procurement thresholds for federally funded procurements

- **Micro-purchase threshold** is \$3,500 or less if awarded prior to June 20, 2018, or \$10,000 or less for contracts awarded after June 20, 2018.
- **Simplified Acquisition (small purchase) threshold** is \$150,000 or less, if awarded prior to June 20, 2018, or \$250,000 or less for procurements awarded after June 20, 2018. Procurements funded by awards issued on or before December 25, 2014, are subject to the previous simplified acquisition threshold of \$100,000.

Recipient procurement policies/procedures may set micro-purchase or small purchase thresholds lower than the Federal threshold. In such cases, recipients must follow state or local law. However, if the state or local small purchase threshold is higher than the Federal simplified acquisition threshold, the recipient is constrained by the Federal threshold for MARAD funded contracts.

BASIC REQUIREMENT

Recipient must have written procurement policies and procedures that include required state, local and Federal provisions

Governing Directive

eCFR :: 2 CFR 200.317 -- Procurements by states.

eCFR :: 2 CFR 200.318 -- General procurement standards. (a) (b) (c) (1,2) (d -k)

eCFR :: 2 CFR 200.319 -- Competition. (a) (b) (1 – 7) (c) (d) (1,2) (e) (f)

eCFR :: 2 CFR 200.320 -- Methods of procurement to be followed.

eCFR :: 2 CFR 200.321 -- Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. (a) (b) (1-6)

eCFR :: 2 CFR 200.322 -- Domestic preferences for procurements

eCFR :: 2 CFR 200.323 -- Procurement of recovered materials.

eCFR :: 2 CFR 200.324 -- Contract cost and price. (a – d)

eCFR :: 2 CFR 200.325 -- Federal awarding agency or pass-through entity review.

eCFR :: 2 CFR 200.326 -- Bonding requirements. (a – c)

eCFR :: 2 CFR 200.327 -- Contract provisions.

BASIC REQUIREMENT

The recipient must maintain written standards of conduct for its representatives engaged in the selection, award, and administration of MARAD-funded contracts. The standards must include sanctions for non-compliance with such standards.

Governing Directive

[eCFR :: 2 CFR 200.318 -- General procurement standards. \(c\) \(1, 2\)](#)

BASIC REQUIREMENT

The recipient must have and follow written procurement protest procedures

Governing Directive

[eCFR :: 2 CFR 200.318 -- General procurement standards. \(k\)](#)

BASIC REQUIREMENT

Recipient must make awards only to responsible contractors as described in its written policies and procedures and in compliance with the requirements of 49 U.S.C 5325(j) and 2 CFR 200.318(h) and include consideration of a contractor's integrity, compliance with public policy, past performance, and financial and technical resources.

Governing Directive

49 U.S.C 5325(j) Awards to Responsible Contractors

eCFR :: 2 CFR Part 180 Subpart C -- Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

eCFR :: 2 CFR 180.310 -- What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

eCFR :: 2 CFR 1200.220 -- What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

BASIC REQUIREMENT

Recipient must maintain records sufficient to detail the history of each procurement as described in its policies and procedures and in compliance with 2 CFR Part 200.318(i)

Such records must include, at a minimum, the rationale for the method of procurement, selection of contract type, the basis for contractor selection, and the basis for the contract type.

Governing Directive

eCFR :: 2 CFR 200.318 -- General procurement standards.(i)

BASIC REQUIREMENT

Recipient must ensure that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders in its policies and procedures and in compliance with 2 CFR Part 200

Governing Directive

[eCFR :: 2 CFR 200.318 -- General procurement standards.\(b\)](#)

BASIC REQUIREMENT

Recipient must ensure that it conducts all procurement transactions in a manner that provide full and open competition and does not unduly restrict competition in its procurement process and as described in its policies and procedures and in compliance with 2 CFR Part 200?

- Placing unreasonable requirements on firms in order for them to qualify to do business;
- Requiring unnecessary experience and excessive bonding;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive contracts to consultants that are on retainer contracts;
- Organizational conflicts of interest;
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and

BASIC REQUIREMENT – Continued –

- Any arbitrary action in the procurement process.
- In state or local geographic preferences

Governing Directive

49 U.S.C. 5325(a) Contract requirements

(a) Competition. Recipients of assistance under this chapter shall conduct all procurement transactions in a manner that provides full and open competition as determined by the Secretary.

49 U.S.C. 5325(h) Contract requirements

(h) Grant prohibition. A grant awarded under this chapter, or the Federal Public Transportation Act of 2015 may not be used to support a procurement that uses an exclusionary or discriminatory specification

[eCFR :: 2 CFR 200.319 -- Competition. \(a – f\)](#)

BASIC REQUIREMENT

Recipient must appropriately use each method of procurement as described in its policies and procedures and in compliance with 2 CFR Part 200. Such methods include the following:

- ✓ Micro-purchases
- ✓ Small Purchases
- ✓ Sealed bid/IFB
- ✓ Competitive Proposals/RFP
- ✓ Non-Competitive proposals/Sole Source
- ✓ Time and Material (restricted-see 2CFR 200.318(j))

Governing Directive

eCFR :: 2 CFR 200.318 -- General procurement standards. (j)

eCFR :: 2 CFR 200.320 -- Methods of procurement to be followed.

BASIC REQUIREMENT

If the recipient procure Architectural Engineering (A&E) Services, it must do so in accordance with 49 U.S.C. 5325(b)?

Governing Directive

49 U.S.C. 5325 (b) Architectural, Engineering, and Design Contracts

(1) Procedures for awarding contract. A contract or requirement for program management, architectural engineering, construction management, a feasibility study, and preliminary engineering, design, architectural, engineering, surveying, mapping, or related services for a project for which Federal assistance is provided under this chapter shall be awarded in the same way as a contract for architectural and engineering services is negotiated under chapter 11 of title 40 [aka "Brooks Act"] or an equivalent qualifications-based requirement of a State adopted before August 10, 2005.

40 U.S.C. 1101-1104 ("Brooks Act")

eCFR :: 2 CFR 200.320 -- Methods of procurement to be followed. (b) (2) (iv4)

BASIC REQUIREMENT

Recipient must develop independent cost estimates and conduct cost and/or price analysis as described in its policies and procedures and for each procurement action above the Federal Simplified Acquisition Threshold

Note that effective June 20, 2018, the Federal Simplified Acquisition Threshold increased from \$150,000 to \$250,000. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the recipient must make independent estimates before receiving bids or proposals.

Governing Directive

eCFR :: 2 CFR 200.324 -- Contract cost and price.

BASIC REQUIREMENT

Recipients must include applicable federal clauses in MARAD funded procurements exceeding the micro-purchase limit and construction contracts over \$2,000

Governing Directive

[eCFR :: Appendix II to Part 200, Title 2 -- Contract Provisions for Non-Federal Entity Contracts Under Federal Awards](#)

[eCFR :: 2 CFR 200.216 -- Prohibition on certain telecommunications and video surveillance services or equipment.](#)

What is the Davis-Bacon Act?

The Davis–Bacon Act of 1931 is a United States federal law that establishes the requirement for paying the local prevailing wages on public works projects for all laborers and mechanics on Federally assisted construction contracts. It applies to "contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works

BASIC REQUIREMENT

Recipient must include required certifications in solicitations and receive signed certifications from bidders as part of their bids or proposals as applicable

- ✓ Lobbying Certification
- ✓ Buy America Compliance
- ✓ American Compliance

Governing Directive

eCFR :: Appendix II to Part 200, Title 2 -- Contract Provisions for Non-Federal Entity Contracts Under Federal Awards (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

The Buy American Act requires the government to purchase products “manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States.” 41 U.S.C. § 8302(a)(1).

- The Buy American Act requires Federal agencies and non-Federal awarded entities to procure domestic materials and products.
- Two conditions must be present for the Buy American Act to apply:
 - (1) The procurement must be intended for public use within the United States; and
 - (2) The items to be procured or the materials from which they are manufactured must be present in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The provisions of the act may be waived if the head of the procuring agency determines the act to be inconsistent with the public interest or the cost of acquiring the domestic product is unreasonable.
- “[I]t is the policy of the executive branch to maximize, consistent with law, the use of goods, products, and materials produced in the United States...through the terms and conditions of Federal financial assistance awards.” This policy was issued as Executive Order 13858 of January 31, 2019, Strengthening Buy American Preferences for Infrastructure Projects.

See note below

Buy America:

The Buy America Act, is exclusive only to grants issued by the Federal Transit Administration and Federal Highway Administration.

The Buy America Act requirements apply to iron and steel products and their coatings that are purchased for the federal-aid highway construction program (highways, bridges, transit systems and terminals). Under Buy America, federal-aid funds may not be obligated for a project unless iron and steel products used in such projects are manufactured in the United States.

Vs.

Buy American:

The Buy American Act may be applied to all direct U.S. federal procurement

BASIC REQUIREMENT

Recipient, if included liquidated damages in its procurement, ensure it is correct.

Governing Directive

Recipients are allowed to use liquidated damage clauses when there is a reasonable expectation of damages (increased costs on the project involved) from late completion or if requirements are exceeded and the extent or amount of such damages would be difficult or impossible to determine. Liquidated damage clauses may not be punitive. They may not be used to impose a penalty or limit or restrict competition or used in situations where delayed performance will not affect the recipient adversely. The rate and measurement of liquidated damages must be specified in the solicitation and contract. Any liquidated damages recovered should be credited to the project account involved unless MARAD permits otherwise.

Liquidated damages should not be utilized as a substitute for other contract performance requirements. Recipients are required to maintain a contract administration system to ensure that they and their third-party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders. There are methods that may be more appropriate than liquidated damages to incentivize or enforce contractor performance.

BASIC REQUIREMENT

Change orders: The recipient is responsible for issuing, evaluating, and making necessary decisions involving any change to its third-party contracts, and any change orders, or modifications it may issue.

Governing Directive

eCFR :: 2 CFR 200.319 -- Competition.

eCFR :: 2 CFR 200.324 -- Contract cost and price. (a)

BASIC REQUIREMENT

If included options in MARAD funded Procurements: Recipients may include options in contracts that reflect reasonably foreseeable needs. If a recipient chooses to use options, the option quantities or periods in the bid must be evaluated in order to determine contract award. The price associated with exercising the option needs to be defined at the outset, either as a specific price, or as a percentage increase of the base price, or some other calculable method. If the options were not evaluated as part of the award, the exercise of the options is considered a sole-source procurement.

Governing Directive

[eCFR :: 2 CFR 200.318 -- General procurement standards. \(d\)](#)

BASIC REQUIREMENT

If Recipient has Subrecipients, oversight requirements and written policies and procedure requirements are required. When a recipient passes through funding to a subrecipient, procurement requirements apply to the subrecipient. In such circumstances, the procurement process of the subrecipient must meet Federal requirements contained in the Uniform Administrative Requirements.

APPLICABILITY

Recipients with subrecipients

Governing Directive

[eCFR :: 2 CFR 200.332 -- Requirements for pass-through entities.](#)



Uniform Guidance (2 CFR 200): <https://www.ecfr.gov/cgi-bin/text-idx?SID=aede55eb5a80b6d121f05576cd7b5d1c&mc=true&node=pt2.1.200&rgn=div5>

Grants.Gov: <https://www.grants.gov/>

Buy America Act: <https://www.govinfo.gov/app/details/CFR-2007-title49-vol7/CFR-2007-title49-vol7-sec661-5>

Buy American Act:
[https://uscode.house.gov/view.xhtml?req=\(title:41%20section:8302%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:41%20section:8302%20edition:prelim))

National Environmental Policy Act: <https://www.epa.gov/laws-regulations/summary-national-environmental-policy-act>

Davis-Bacon Act: <https://www.dol.gov/agencies/whd/government-contracts/construction>

Basic Requirement

Recipients are required to maintain a drug free workplace for all award-related employees; report any convictions occurring in the workplace timely; and have an ongoing drug free awareness program.



Basic Requirement

The recipient must have a written policy as prescribed in the Drug Free Workplace Act (DFWA) that is distributed to all award-related employees.

- ✓ Recipients are required to have and distribute to award-related employees a written drug free workplace policy as prescribed by the DFWA.

Governing Directive

[41 U.S.C. 8103 - Drug-free workplace requirements for Federal grant recipients - Content Details - USCODE-2015-title41-subtitleIV-chap81-sec8103 \(govinfo.gov\)](#)

Basic Requirement

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Governing Directive

[41 U.S.C. 8103 - Drug-free workplace requirements for Federal grant recipients - Content Details - USCODE-2015-title41-subtitleIV-chap81-sec8103 \(govinfo.gov\)](#)

[eCFR :: 49 CFR 32.205 -- What must I include in my drug-free workplace statement?](#)

[eCFR :: 49 CFR 32.210 -- To whom must I distribute my drug-free workplace statement?](#)

Basic Requirement

Recipient must have an on-going drug free awareness program for awarded-related employees.

Governing Directive

[Drug free workplace requirements USCODE-2009-title41-chap10.pdf \(govinfo.gov\)](#) (a) (1) (a – g)

[eCFR :: 49 CFR 32.215 -- What must I include in my drug-free awareness program?](#)

Basic Requirement

Recipient must report to MARAD all criminal convictions of award-related employees for a Federal or State drug statute violation that occurred in the workplace.

Governing Directive

Drug free workplace requirements USCODE-2009-title41-chap10.pdf (govinfo.gov) (a) (1) (a – g)

eCFR :: 49 CFR 32.225 -- What actions must I take concerning employees who are convicted of drug violations in the workplace?

Basic Requirement

Recipients receiving MARAD funds that have safety-sensitive employees must have a drug and alcohol testing program in place for such employees

Notice

**This is a
DRUG-FREE
Workplace
We
Conduct
Drug
Testing**

Basic Requirement

The recipient must have a board-adopted drug and alcohol misuse policy.

Recipients with safety-sensitive employees, as defined in 49 CFR Part 40, must have a drug and alcohol testing policy detailing the provisions of the recipient's drug and alcohol program.

Governing Directive

eCFR :: 49 CFR Part 40 -- Procedures for Workplace Drug and Alcohol Testing Programs (a) (c)

eCFR :: 49 CFR 40.5 -- Who issues authoritative interpretations of this regulation?

eCFR :: 49 CFR 40.7 -- How can you get an exemption from a requirement in this regulation?

eCFR :: 49 CFR 40.11 -- What are the general responsibilities of employers under this regulation?

Basic Requirement

If you have covered employees and supervisors/officers, recipient must provide the minimum required training for those employees.

- ✓ Recipient required to provide at least 60 minutes of drug training for covered employees and at least 120 minutes of training for supervisors and other officers authorized by the employer to make reasonable suspicion determination

Governing Directive

[eCFR :: 49 CFR Part 40 Subpart B -- Employer Responsibilities](#)

Basic Requirement

Recipient must obtain drug and alcohol testing records from employees' prior employer. These records must be stored in a secure controlled access location.

Governing Directive

eCFR :: 49 CFR 40.25 -- Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties? (a), (d), (e)

Basic Requirement

Recipient must ensure all medical review officers, substance abuse professionals, breath alcohol technicians, and collectors in the drug and alcohol testing program have the required qualifications.

Governing Directive

eCFR :: 10 CFR 40.31 -- Application for specific licenses.

eCFR :: 49 CFR 40.33 -- What training requirements must a collector meet? (e), (g)

eCFR :: 49 CFR 40.121 -- Who is qualified to act as an MRO? (d), (e)

eCFR :: 49 CFR 40.211 -- Who conducts DOT alcohol tests? (a)

eCFR :: 49 CFR 40.213 -- What training requirements must STTs and BATs meet? (e), (g)

eCFR :: 49 CFR 40.281 -- Who is qualified to act as a SAP? (d), (e)

SAP Assessments and Evaluations

The SAP must conduct a face-to-face assessment and evaluation of an employee who has violated DOT drug and alcohol regulations. DOT has always maintained that the "face-to-face" assessment and evaluation must be done "in person" and is essential to the SAP process.

- eCFR :: 49 CFR 40.291 -- What is the role of the SAP in the evaluation, referral, and treatment process of an employee who has violated DOT agency drug and alcohol testing regulations?
- eCFR :: 49 CFR 40.293 -- What is the SAP's function in conducting the initial evaluation of an employee?
- eCFR :: 49 CFR 40.301 -- What is the SAP's function in the follow-up evaluation of an employee?

Re-qualification Timelines for Certain Service Agents

Collectors, MROs, STT/BATs, and SAPs are required to maintain their DOT required qualifications to continue to act as service agents in the DOT drug and alcohol testing program. Specifically, collectors and STT/BATs must complete refresher training every five years, MROs must complete requalification training every five years, and SAPs must complete 12 professional development hours every three years.

- eCFR :: 49 CFR 40.33 -- What training requirements must a collector meet? (e)
- eCFR :: 49 CFR 40.121 -- Who is qualified to act as an MRO? (d)
- eCFR :: 49 CFR 40.213 -- What training requirements must STTs and BATs meet? (e)
- eCFR :: 49 CFR 40.281 -- Who is qualified to act as a SAP? (d)





That's all Folks!