

# Getting Along with the Feds: Tips and Best Practices for Infrastructure Projects with a Federal Component

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# Introductions



Mary Beth Coburn, P.E.  
Partner

## Specialties

- Civil Engineer
- Public Works
- Procurement
- Contracting
- Federal Funding Compliance

# Introductions

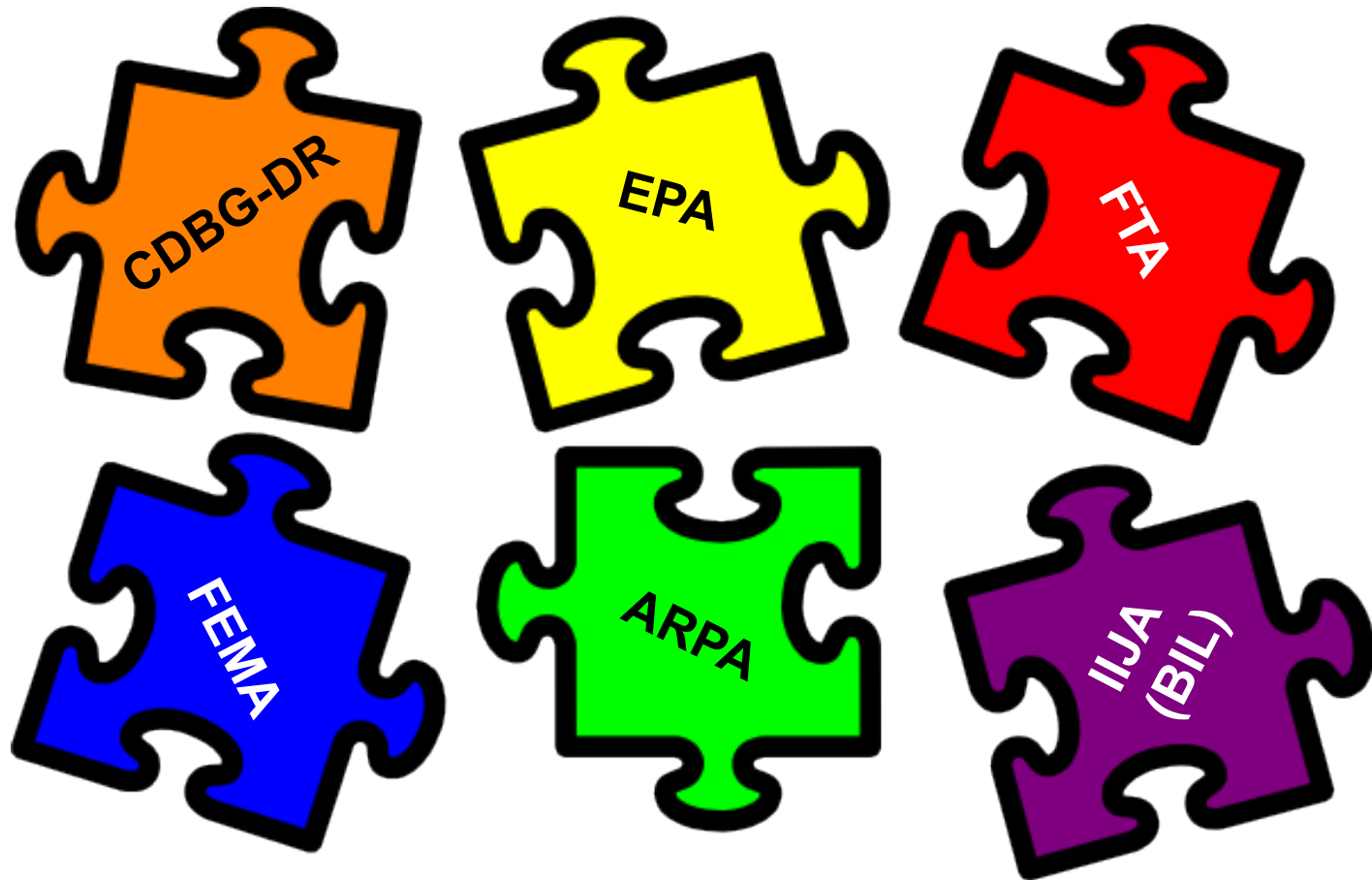


Lowry A. Crook  
Partner

## Specialties

- United States Army Corps of Engineers
- Water Infrastructure
- Disaster Resiliency & Recovery
- Environmental Policy
- Relief & Recovery Eligibility & Compliance
- Federal Funding

# Not all federal funds have the same compliance requirements



# Compliance Differentials



Grant vs Loan  
2 CFR 200



ARPA – Davis  
Bacon & Treasury



FEMA – Eligibility &  
Timing



CDBG-DR – Local  
Cost Share  
Flexibility



FTA – DBE vs Other  
Federal Agencies

# ARPA SLFRF Purse Strings



# Risks of Noncompliance

- De-obligations of Funds
- Payments Temporarily Withheld
- Work Not Reimbursed
- Suspending Federal Award
- Debarment From Further Awards
- Negative Publicity
- State & Federal Investigation



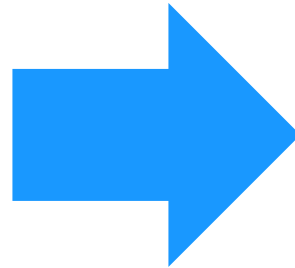
**DISASTER**



# Procurement Standards

For the acquisition of property or services required under a  
**Federal award or subaward**

Municipalities must have and must follow their own documented procurement procedures, consistent with state & local laws and regulations



Procedures must also conform to applicable Federal law & the standards identified in 2 CFR §§ 200.318 - 200.327

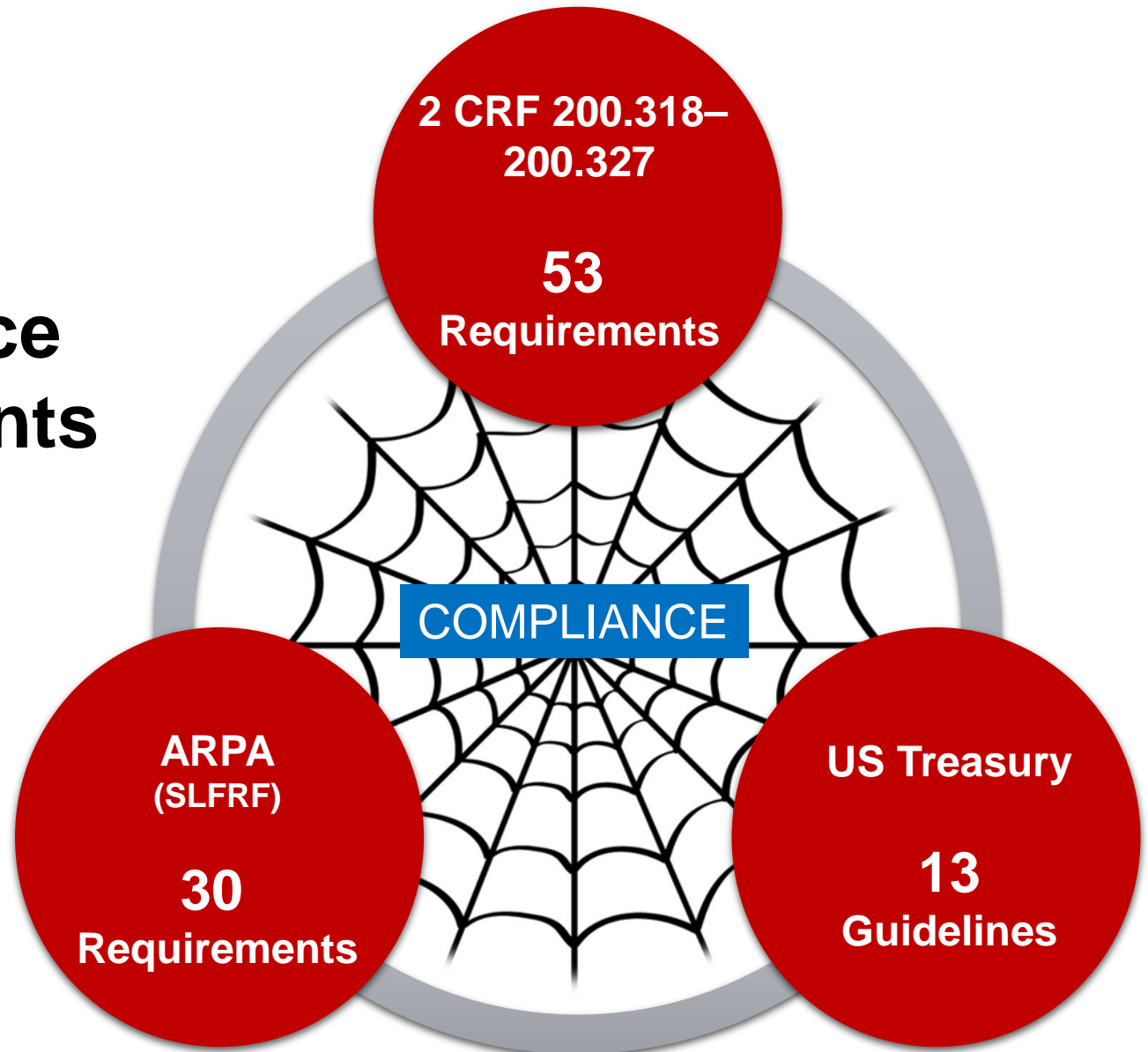
# 2 CFR 200.318 – 200.327

## Post Federal Award Requirements

§ 200.318	General procurement standards.
§ 200.319	Competition.
§ 200.320	Methods of procurement to be followed.
§ 200.321	Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.
§ 200.322	Domestic preferences for procurements.
§ 200.323	Procurement of recovered materials.
§ 200.324	Contract cost and price.
§ 200.325	Federal awarding agency or pass-through entity review.
§ 200.326	Bonding requirements.
§ 200.327	Contract provisions.

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## Compliance Requirements



# Procurement Best Practices

- ✓ Review & update existing polices/ordinances to include Federal rules
- ✓ Prepare Federally compliant model contract documents
- ✓ Don't assume your grant administrator knows each specific federal program requirement
- ✓ Training to implement and follow Federal rules and utilize contracting documents
- ✓ Document, Document, Document!

# Build America, Buy America

## OMB Memorandum M-22-11

- New “Buy America” sourcing requirements for infrastructure programs
  - Applies broadly to all federally-funded infrastructure projects, not just IIJA-funded projects
- New processes for issuing “Buy America” waivers
- The new requirements went into effective May 14, 2022
- Agencies are now creating guidance for their individual programs



# Buy America – Sourcing & Waivers

NEW

## Buy America Requirements

- 1) **Iron & Steel** - 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) **Manufacture Materials** - 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 % of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
- 3) **Construction Materials** - All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United

NEW

## Buy America Waivers

- 1) **Public interest** – Applying the domestic content procurement preference would be inconsistent with the public interest;
- 2) **Nonavailability** – Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- 3) **Unreasonable cost** – The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 % (an “unreasonable cost waiver”).
- 4) **Notice** – Notice and public comment process required; **Start early!**

# Best Practices for Federal Compliance

- ✓ Make sure projects meet the eligibility criteria
- ✓ Have a solid understanding of the grant guidelines and compliance requirements, the Uniform Guidance and specific reporting requirements
- ✓ Develop grant policies and procedures
- ✓ Develop internal controls and governance over grant administration and sub-recipient monitoring
- ✓ Prepare for a Single Audit or Attestation
- ✓ DOCUMENT DOCUMENT DOCUMENT

# Contact Information

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