

AMS/FAST CHANGE REQUEST (CR) COVERSHEET

Change Request Number: 22-70

Date Received: April 29, 2022

Title: Bipartisan Infrastructure Law - Guidance

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Policy and Guidance: (Please check only one box)

- | | |
|---|--|
| ☐ Policy | ☐ Procurement Tools and Resources |
| ☒ Guidance | ☐ Real Property Templates and Samples |
| ☐ Procurement Samples | ☐ Procurement Clauses |
| ☐ Procurement Templates | ☐ Real Property Clauses |
| ☐ Procurement Forms | ☐ Other Tools and Resources |
| ☐ Procurement Checklists | |

Summary of Change:

New Guidance re Bipartisan Infrastructure Law-funded procurements - specifies requirements for public announcements, solicitation and award, data reporting, applicability of the Buy American Act, and applicability of noncompetitive small business awards.

Reason for Change:

Based on the Infrastructure Investment and Jobs Act, Public Law 117-58, commonly referred to as the "Bipartisan Infrastructure Law" as implemented by AMS Interim Guidance dated April 28, 2022.

Development, Review, and Concurrence: AAQ/AGC-500/AAP-110

Target Audience: Program office and contracting personnel

Briefing Planned: No.

ASAG Responsibilities: None.

Section / Text Location:

T3.18 (concurrent with new AMS Clause and new Procurement Form)

The redline version must be a comparison with the current published FAST version.

☐ I confirm I used the latest published version to create this change / redline

or

☒ This is new content

Links: https://fast.faa.gov/PPG_Procurement_Guidance.cfm

Attachments: new content attached.

Other Files: N/A.

Redline(s):

Section Added: T3.18 – Bipartisan Infrastructure Law

Procurement Guidance - (7/2022)

[T3.18 Bipartisan Infrastructure Law](#) Added 7/2022

[A Implementation of the Bipartisan Infrastructure Law](#) Added 7/2022

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[6 Noncompetitive Small Business Awards](#) Added 7/2022

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T3.18 Bipartisan Infrastructure Law Added 7/2022

A Implementation of the Bipartisan Infrastructure Law Added 7/2022

1 General Requirements Added 7/2022

a. The Infrastructure Investment and Jobs Act, Public Law 117-58, commonly referred to as the “Bipartisan Infrastructure Law” (BIL), authorizes Facilities and Equipment (F&E) funding for

- (1) replacing terminal and en route air traffic control facilities;
- (2) improving air route traffic control center and combined control facility buildings;
- (3) improving air traffic control en route radar facilities;
- (4) improving air traffic control tower and terminal radar approach control facilities;
- (5) national airspace system facilities OSHA and environmental standards compliance;
- (6) landing and navigational aids;
- (7) fuel storage tank replacement and management;
- (8) unstaffed infrastructure sustainment;
- (9) real property disposition;
- (10) electrical power system sustain and support;
- (11) energy maintenance and compliance;
- (12) hazardous materials management and environmental cleanup;
- (13) facility security risk management;
- (14) mobile asset management program; and
- (15) administrative expenses, including salaries and expenses, administration, and oversight.

Special contracting requirements described in this guidance section apply only to procurements funded in whole or in part, by the BIL.

b. This section applies to all BIL-funded acquisitions with exception to procurements made using purchase cards.

- c. BIL does not provide authority to waive any documentation or approval required for procurement planning, solicitation, evaluation, and award. The Contracting Officer (CO) must comply with existing AMS policy and guidance for any project funded through BIL.
- d. BIL requires special reporting. For any contract funded, in whole or in part, by BIL, contractors must submit quarterly and at the completion of the contract, a Uniform Bipartisan Infrastructure Law (BIL) Data Report as described at AMS Guidance T3.18.A.4, BIL Data Reporting.

2 Public Announcements Added 7/2022

For BIL procurements, the following special formatting is required for public announcements:

- (1) All presolicitation and solicitation notices must include the phrase “BIL-funded” as the beginning text in the title field preceding the actual title in the announcement.
- (2) Although it is not required, the CO should consider making public announcements for all awards that use BIL funds. To facilitate transparency and ensure consistency in tracking award announcements for BIL-funded contracts, if making a public announcement, the CO must insert the phrase “BIL-funded” as the beginning text in the title field preceding the remaining title on the Contracting Opportunities page on SAM.gov.

3 Solicitation and Award Added 7/2022

- a. *Competition and Fixed Price Awards.* To the extent practicable, BIL-funded awards should be competitive and fixed priced. The CO must properly document the rationale when competition or a fixed priced arrangement is not appropriate for BIL-funded awards.
- b. *Separate Tracking of BIL Funds.* To maximize transparency of the spending of BIL-funds, the CO must structure contract awards to allow for separate tracking of BIL funds and projects. For example, the CO should consider awarding dedicated separate contracts when using BIL funds or establishing CLIN structures so that BIL funds are not co-mingled with other funds. In the event the CO receives BIL funds comingled with other funds on a single CLIN, the CO must include in the obligating action a billing structure that sets forth the percentage of each invoice to be allocated between BIL-funds versus non-BIL funds. In addition, the CO must annotate on the face of the obligating action the BIL funds as a percentage of total funds on the action.
- c. *Contractor Reporting Clause.* The CO must insert AMS clause 3.18-1 “Bipartisan Infrastructure Law – Reporting Requirements” in all solicitations, contracts, orders, and modifications funded in whole or in part with BIL funds. The Uniform BIL Data Report must be used in conjunction with this clause. COs must not use BIL funds on new or existing contracts and orders if this clause is not incorporated.

4 BIL Data Reporting Added 7/2022

- a. *Contractor Reporting on Use of Funds.* COs must provide contractors with the Uniform Bipartisan Infrastructure Law (BIL) Data Report. Contractors must complete and submit the data report quarterly and at the completion of the contract to the email address indicated on the Uniform BIL Data Report.
- b. *Failure to Report.* The CO must make the contractor’s failure to comply with the reporting requirements a part of the contractor’s past performance information. As with other contract deliverables, the CO may use remedies such as withholding payment or seeking other consideration for a contractor’s failure to deliver contractually specified reports within required timeframes.

5 Applicability of Buy American Laws Added 7/2022

Buy American Act. Any project using BIL funds is subject to the provisions of the Buy American Act (41 U.S.C. §§8301-8305) (BAA) including its associated exceptions. (See AMS Procurement Guidance T3.6.4.A.2 and T3.6.4.A.3).

6 Noncompetitive Small Business Awards Added 7/2022

For information on the interim AMS Policy changes that increases noncompetitive small business thresholds for BIL funded projects, including projects that contain both BIL and non-BIL funded requirements, see the FAE Memo dated March 23, 2022, titled “INTERIM CHANGES TO AMS – Raise Thresholds for Noncompetitive Small Business Awards in AMS Policy for Bipartisan Infrastructure Law (BIL) Funded Acquisitions.”

B Clauses Added 7/2022

[view contract clauses](#)

C Procurement Forms Added 7/2022

Document Name
Uniform Bipartisan Infrastructure Law (BIL) Data Report

D Procurement Samples Added 7/2022

Document Name

E Procurement Templates Added 7/2022

Document Name

F Procurement Tools and Resources Added 7/2022

Document Name