



# COVID-19 Compliance Plan

Version 2

February 2022

**STATE OF NEW JERSEY  
COVID-19 COMPLIANCE AND  
OVERSIGHT TASKFORCE**

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# I. INTRODUCTION

## A. Executive Order 166 (Murphy, 2020)

To ensure oversight and accountability in the State's administration of crucial COVID-19 resources, on July 17, 2020, Governor Murphy signed [Executive Order No. 166](#) ("EO 166"). EO 166 highlighted the State's commitment to ensuring that every public dollar is spent toward impactful recovery and resilience projects and programs. To that end, EO 166 established the Governor's Disaster Recovery Office ("GDRO") and the COVID-19 Compliance and Oversight Taskforce ("Taskforce"). It also mandated the appointment of a COVID-19 Accountability Officer ("Accountability Officer") at each principal department, agency, and independent authority receiving COVID-19 Recovery Funds or administering COVID-19 Recovery Programs ("Recovery Program Participant"). EO 166 also charged the Office of the State Comptroller ("OSC") with additional responsibilities in reviewing COVID-19 procurements, providing training and assistance to state agencies, departments, and authorities, and overseeing the work of independent COVID-19 Oversight Integrity Monitors ("Integrity Monitors").

As defined in EO 166, COVID-19 Recovery Funds are any funds disbursed by the state or federal government to help New Jersey residents, businesses, non-profit organizations, government agencies, and other entities respond to or recover from the COVID-19 pandemic ("COVID-19 Recovery Programs"), including any funds awarded to the State pursuant to the Coronavirus Aid, Relief, and Economic Security Act, commonly known as the CARES Act ("COVID-19 Recovery Funds").

## B. COVID-19 Compliance and Oversight Taskforce

Pursuant to EO 166, the Taskforce is responsible for advising Recovery Program Participants on complying with state and federal laws, and mitigating the risks of waste, fraud, and abuse. The Taskforce is composed of the following members or their designees:

- Kevin D. Walsh, Acting State Comptroller (Chair)
- Andrew J. Bruck, Acting Attorney General
- Elizabeth Maher Muoio, State Treasurer
- Daniel Kelly, Executive Director, Governor's Disaster Recovery Office
- Christopher Iu, Accountability Officer - NJ Transit
- Amanda Schultz, Accountability Officer - Department of Education
- Catherine Schafer, Accountability Officer - Department of Children and Families

EO 166 directs the Taskforce to issue a Compliance Plan, which describes the State's system to guard against waste, fraud, and abuse in the disbursement of COVID-19 Recovery Funds and the administration of COVID-19 Recovery Programs. EO 166 also directs the Taskforce to issue guidelines regarding the appointment and responsibilities of Integrity Monitors. The Integrity Monitor Guidelines have been published separately and were most recently updated on June 16, 2021.

Efficient and effective audit and oversight, along with robust transparency procedures, are critically important to ensure public trust in government. The Taskforce is committed to assisting Recovery Program Participants in establishing internal controls and other accountability measures to maximize the

impact and appropriate use of COVID-19 Recovery Funds and the effectiveness of the COVID-19 Recovery Programs.

### **C. Compliance Plan Overview**

This Compliance Plan consists of three parts: (1) a description of the State's oversight framework; (2) a review of state and federal guidelines applicable to COVID-19 recovery funding; and (3) best practices for Recovery Program Participants to identify, assess, and mitigate risk in their programs, contracts, and other disbursements. The appendix to this plan includes links to important resources for Recovery Program Participants.

*This Compliance Plan does not address all federal requirements or provide authoritative legal guidance regarding all situations. This plan provides a general overview of applicable guidelines and resources for further information. The Taskforce encourages Recovery Program Participants to consult with the Division of Law in the Office of the Attorney General and in-house legal counsel prior to expending federal funds and implementing recovery programs.*



## II. THE OVERSIGHT FRAMEWORK

In accordance with EO 166, the Taskforce has established a comprehensive compliance plan consisting of seven elements designed to ensure proper controls and prevent and detect waste, fraud, and abuse associated with the State's COVID-19 recovery efforts. These seven elements are intended to ensure public transparency and accountability in the State's use of funds disbursed by the state and federal governments in response to COVID-19.

### A. COVID-19 Accountability Officers

EO 166 directs state agencies and independent authorities that receive COVID-19 Recovery Funds or administer a COVID-19 Recovery Program to assist in the State's accountability effort by identifying an Accountability Officer as the central point of contact who will work with and serve as a direct point of contact for the GDRO and OSC.

The Accountability Officer is required to be a senior-level official, below the Executive Director or Commissioner-level, who will oversee the responsible disbursement of COVID-19 Recovery Funds and the administration of COVID-19 Recovery Programs.

In order to accomplish the goals of EO 166, the Accountability Officer should:

- Establish and maintain a culture of accountability, transparency, and compliance;
- Oversee the responsible disbursement of COVID-19 Recovery Funds and the administration of any COVID-19 Recovery Programs;

- Ensure that all new procurements after July 17, 2020 involving an expenditure of \$150,000 or more of COVID-19 Recovery Funds are submitted to OSC for review;
- Provide, at the request of OSC, all documentation demonstrating that an expenditure of less than \$150,000 involving COVID-19 Recovery Funds and/or a COVID-19 Recovery Program complied with all relevant state and federal laws;
- Serve as a point of contact with OSC for such procurements;
- Review and assess the management of any COVID-19 related contracts;
- Review and assess the adequacy of all existing internal controls;
- Conduct, or cause to be conducted, an internal risk assessment related to the disbursement of COVID-19 Recovery Funds and the administration of COVID-19 Recovery Programs;
- Based upon a risk assessment and other factors, in accordance with guidelines issued by the Taskforce, determine the need to retain an Integrity Monitor; once retained, work directly with the Integrity Monitor in accordance with the Integrity Monitor Guidelines established by the Taskforce;
- Promptly address any deficiencies or issues, whether raised by Integrity Monitors or otherwise, and advise the GDRO of any such deficiencies or issues;
- Maintain open communication with the GDRO and OSC;
- Promptly respond to any and all requests for information and documents from the GDRO and OSC;
- Attend trainings conducted by OSC;

- Consult with legal counsel in the Office of the Attorney General as necessary;
- Determine and adhere to funding deadlines to ensure funds are properly and efficiently spent;
- Ensure compliance with applicable state and federal reporting requirements;
- Ensure compliance with applicable state and federal rules and requirements, including Uniform Guidance, civil rights laws, whistleblower protections, and other relevant laws;
- Engage with audit staff to develop areas for future audit oversight;
- Train staff as necessary on COVID-19 or grant-related compliance issues; and
- Promptly refer any suspected fraud to the appropriate oversight or law enforcement entity.

This list of responsibilities is intended to be illustrative and not exhaustive. Accountability Officers are expected to act proactively by identifying, assessing, and understanding the needs of their agencies, which may result in additional oversight tasks that are not specifi-

cally identified above.

## B. COVID-19 Integrity Oversight Monitors

Pursuant to EO 166, Integrity Monitors may be used to oversee the disbursement of COVID-19 Recovery Funds and to oversee the administration of a COVID-19 Recovery Program. The Taskforce has issued guidelines regarding the appointment and responsibilities of the Integrity Monitors. The most recent version was issued on June 16, 2021. OSC has also issued guidance instructing Accountability Officers on best practices for retaining and working with Integrity Monitors. The Integrity Monitor Guidelines, the Working with Integrity Monitors guidance, and other relevant resources can be found on [OSC's website](#).

The GDRO and OSC will oversee the work of any Integrity Monitors and review reports from them regarding their work. In addition to their regular reporting requirements, the Integrity Monitors will be expected to respond expeditiously to requests for information from the GDRO and OSC and to report immediately to Recovery Program Participants and OSC on findings necessitating action to prevent the misuse or mis-spending of COVID-19 Recovery Funds. The Integrity



Monitors will also be expected to report findings of potential criminal conduct to the Office of the Attorney General.

### C. Training and Technical Assistance

Pursuant to EO 166, OSC is responsible for providing COVID-19 Recovery training for Recovery Program Participants. The [August 2020 training](#) includes best practices for mitigating risks of waste, fraud, and abuse, with a focus on best practices related to procurement and internal controls. The training presentation and materials are available for reference on [OSC's website](#).

Recovery Program Participants with specific questions regarding procurement practices may submit their questions in writing to [contracts@osc.nj.gov](mailto:contracts@osc.nj.gov). Participants are also encouraged to seek legal and compliance advice from their legal counsel at the Office of the Attorney General.

### D. Procurement Reviews

OSC's Procurement Division has broad jurisdiction to review and monitor the process of soliciting proposals for and the awarding of contracts that meet or exceed certain statutory dollar thresholds. Prior to July 1, 2020, OSC's review thresholds were \$2 million and \$10 million for post-award and pre-advertisement reviews, respectively. Effective July 1, 2020, pursuant to *N.J.S.A. 52:15C-10d*, those thresholds increased to \$2.5 million for post-award reviews and \$12.5 million for pre-advertisement reviews.

There are more than 1,900 public entities subject to OSC's statutory contract oversight. These entities include, but are not limited to, municipalities, school districts, state departments, and public colleges and universities. Ordinarily, for any procurement expected to be greater than \$12.5 million, notice must be submitted to OSC at least 30 days prior to advertise-

ment. For contracts greater than \$2.5 million, but less than \$12.5 million, post-award notice must be provided to OSC within 20 business days after the award.

EO 166 expands the scope of OSC's pre-advertisement review for state entities for any potential procurement of \$150,000 or more that (i) involves COVID-19 Recovery Funds or (ii) is for a COVID-19 Recovery Program. Recovery Program Participant's engagement of an Integrity Monitor is subject to such pre-advertisement review.

For COVID-19 procurements satisfying the above criteria, Recovery Program Participants are expected to complete [OSC Form E1](#). The completed form shall be submitted by email to OSC at [contracts@osc.nj.gov](mailto:contracts@osc.nj.gov) with the following documents, as appropriate, to the procurement in final form:

- Proposed advertisement;
- Proposed solicitation (Request for Proposals, Request for Quotes or Invitation to Bidders, including the scope of work or specifications);
- Statutorily-required forms;
- Waiver packet (with justification for use of the exception to competition and all required approvals); and
- All documentation required for transactions pursuant to the Recovery Program Participant's delegated purchasing authority (applicable to DOH, NJSP/OEM, DHS and DCF only).

Recovery Program Participants must provide prospective vendors notice that, pursuant to EO 166, all approved contracts for the allocation and expenditure of COVID-19 Recovery Funds will be posted on the COVID-19 Transparency website. This notice is available as an attachment in the Appendix.

Within 10 business days of submission, OSC will:



- review potential procurements for compliance with applicable laws, rules, and regulations; and
- inform the Recovery Program Participant and the GDRO of the changes needed to make the process legally compliant.

For planning purposes, Recovery Program Participants should submit the final documents to the State Comptroller not later than 10 business days from the anticipated date of advertisement.

To promote accountability and transparency, OSC will ensure that all awarded contracts for the allocation and expenditure of resources involving a recovery program allocated by or through any Recovery Program Participant are publicly posted online to the [GDRO's COVID-19 Oversight website](#). Within 20 business days after the contract award, the completed [OSC Form E2](#) along with the fully signed contract shall be submitted to OSC at [contracts@osc.nj.gov](mailto:contracts@osc.nj.gov). Typically, the contract consists of several documents: the solicitation issued and any addenda, the successful proposer's proposal or bid and any signed forms, any general or special provisions, and standard terms and conditions.

As noted above, for more information regarding COVID-19 related procurements, please refer to the training presentation and materials available on [OSC's website](#).

### **E. Reporting Requirements**

Recovery Program Participants are expected to provide information, documentation, and full cooperation to the GDRO and Taskforce upon request. EO 166 specifically authorizes the GDRO, OSC, and Taskforce to call upon any department, office, division, or agency of the State to provide information, personnel, or other assistance necessary to discharge their duties in accordance with the executive order.

Furthermore, Recovery Program Participants are expected to comply with the reporting requirements established by applicable state and federal law, guidance, and by the GDRO. This includes providing timely and complete reporting to the State, so the State may fulfill its federal reporting requirements.

### **F. Waste, Fraud, and Abuse Hotline**

OSC has an established fraud hotline that will be used to receive complaints concerning waste, fraud, and abuse of COVID-19 Recovery Funds. Investigators will field and review tips, referrals, and complaints provided to the office. Recovery Program Participants and the general public should submit tips through the [OSC's website](#), via email at [ComptrollerTips@osc.nj.gov](mailto:ComptrollerTips@osc.nj.gov), or by calling the toll-free hotline, 1-855-OSC-TIPS.

OSC will track all COVID-19 Recovery Fund related calls and refer complaints indicating criminal activity to the Office of the Attorney General. Complaints not involving potential criminal activity will be vetted by OSC and, where appropriate, referred to the proper agency.

### **G. Audits**

In addition to the prevention, detection, and monitoring steps outlined above, OSC may conduct audits of Recovery Program Participants regarding the use of COVID-19 Recovery Funds and the administration of the COVID-19 Recovery Programs. Recovery Program Participants should also be prepared to be audited by other state and federal entities with oversight authority.

### **III. COMPLIANCE WITH AWARD TERMS AND CONDITIONS**

In general, federal awards are subject to legally binding requirements that may be referred to as award terms and conditions, funding agreements, or grant agreements. By accepting the federal funding, recipients of federal funds agree to abide by the terms and conditions set forth in the agreement. The award terms and conditions will differ depending on the federal award, but they generally address the following topics: allowable and unallowable costs, indirect and administrative costs, pre-award costs, conflicts of interest, reporting and documentation requirements, and applicability of the Uniform Guidance and other federal statutes or regulations. Recovery Program Participants must ensure they comply with all requirements set forth in the award terms and conditions.

## IV. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

In addition to complying with the federal award's terms and conditions, Recovery Program Participants must also comply with other applicable state and federal statutes, regulations, and executive orders. Recovery Program Participants should consult in-house legal counsel or the Office of the Attorney General for any specific questions regarding such compliance.

### A. UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS (2 C.F.R. PART 200)

Most Recovery Program Participants receiving federal awards will be required to comply with portions of the [Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#) (commonly called the "Uniform Guidance"). The Uniform Guidance is an authoritative set of rules and requirements applicable to federal awards.

Under the Uniform Guidance, a non-federal entity receiving a federal award may be either a direct recipient of those funds (e.g., federal agency award to a state) or a subrecipient receiving federal funds through a subaward (e.g., federal agency award to a state, and the state makes a subaward to a county). The sections below highlight a few specific requirements from the Uniform Guidance.

*Recovery Program Participants subject to the Uniform Guidance must ensure programs comply with all applicable requirements.*

Federal agencies may also modify or make exceptions to the requirements, so Recovery Program Participants should check their award terms and conditions and the [Assistance Listings](#) on SAM.gov for detail on the specific provisions of the Uniform Guidance that apply to their award. Recovery Program Participants can search by Assistance Listing Number (ALN) (formerly known as CFDA number) on the Assistance Listings webpage and review the applicable section on "Compliance Requirements."

#### 1. Internal Controls (2 C.F.R. 200.303)

The Uniform Guidance requires non-federal entities to establish and maintain effective internal controls over a federal award that provide reasonable assurance that the non-federal entity is managing the federal award in compliance with federal statutes, regulations, and the terms and conditions of the federal award. These internal controls should comply with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States (the "Green Book") or the "Internal Control Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO framework").

Non-federal entities are expected to evaluate and monitor their compliance and take prompt action when noncompliance is identified. The Uniform Guidance also requires non-federal entities to take reasonable measures to safeguard and protect personally identifiable information.

#### 2. Procurement Standards (C.F.R. 200.317 through 200.327)

Section 2 C.F.R. 200.317 sets standards for procurements by states using federal grant funding. In gener-

al, the Uniform Guidance requires that a state procuring property and services under a federal award must follow the same policies and procedures for procurements that are used for procurements paid for with its non-federal funds. States must also comply with: 2 *C.F.R.* 200.321, regarding contracting with small and minority businesses and women's business enterprises; 2 *C.F.R.* 200.322, regarding the preference for domestic goods; and 2 *C.F.R.* 200.323, regarding the procurement of recovered materials. States must also ensure that every purchase order or contract includes any clauses required by 2 *C.F.R.* 200.327.

All other non-federal entities, including sub-recipients of a state, must follow the procurement standards set forth in 2 *C.F.R.* 200.318 through 200.327 and use their own documented procurement procedures, which reflect applicable state law and regulations, provided that they conform to the federal standards. In the event of a direct conflict between state and federal requirements, the more restrictive requirements should be followed. These guidelines address general procurement standards, competition, the method of procurement, cost and price, required contract provisions, and other requirements. Recovery Program Participants should review the OSC's [training presentation and materials](#), and consult with legal counsel and the Office of the Attorney General to ensure their procurements properly address these federal standards.

### **3. Performance and Financial Monitoring and Reporting (C.F.R. 200.328 through 200.330)**

Sections 2 *C.F.R.* 200.328 through 200.330 of the Uniform Guidance set forth procedures for monitoring and reporting the grantee's financial and program performance and outline certain standard reporting requirements. Recovery Program Participants must also ensure they comply with the reporting requirements specific to their federal award.

### **4. Subrecipient Monitoring and Management (C.F.R. 200.331 through 200.333)**

A subrecipient is a non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal award. A subrecipient is often used by the pass-through entity to administer program activities. An individual who is the beneficiary of such an award or a vendor is not considered a subrecipient. The pass-through entity, however, remains responsible for the oversight and monitoring of the subrecipient and bears responsibility for the administration of the funds. 2 *C.F.R.* 200.331(a) outlines the characteristics that support the classification of an entity as a subrecipient, whereas 2 *C.F.R.* 200.331(b) clarifies the characteristics of a contractor.

Pursuant to 2 *C.F.R.* 200.332, the pass-through entity must provide specific notice of the subaward to the subrecipient that includes, but is not limited to, federal award details, federal award terms and conditions, reporting requirements, appropriate deadlines, close-out of the subaward, record retention requirements, and access to all performance and financial records.

Pass-through entities must also evaluate subrecipients' risk of non-compliance with federal statutes, regulations, and terms and conditions of the award to determine the appropriate level of subrecipient monitoring to perform. Monitoring should include ensuring the subaward is used for authorized purposes in compliance with applicable laws, regulations, and guidance, and that performance goals are achieved. Depending on the level of risk identified, additional monitoring tools are set forth in 2 *C.F.R.* 200.332(e). Pass-through entities are also responsible for ensuring subrecipients are audited when their federal awards exceed the threshold set in 2 *C.F.R.* 200.501, and pass-through entities must consider whether the results of any subrecipient audits or reviews indicate that adjustments are necessary to the pass-through entities' records. Finally, pass-through entities should consider whether

to take enforcement actions against noncompliant subrecipients, as described in 2 C.F.R. 200.339.

### **5. Record Retention and Access (2 C.F.R. 200.334 through 200.338)**

Pursuant to 2 C.F.R. 200.334, financial records, supporting documents, statistical records, and all other records pertinent to a federal award must be retained for a period of three years from the date of submission of the final expenditure report. Recovery Program Participants should note, however, that most federal awards related to COVID-19 have specific time frames for record retention in their award terms and conditions that differ from the Uniform Guidance. In many cases, the award terms and conditions provide for a time frame of at least **five** years. Recovery Program Participants should check the terms and conditions of their federal awards to be sure they retain documents for the appropriate length of time.

Records should, whenever practicable, be collected, transmitted, and stored in open and machine-readable formats rather than in closed formats or on paper in accordance with applicable requirements. Recovery Program Participants must always provide or accept paper versions of federal award-related information upon request. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

Pursuant to 2 C.F.R. 200.337(a), the federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have

the right of access to any documents, papers, or other records of the non-federal entity which are pertinent to the federal award, in order to make audits, examinations, excerpts, and transcripts. This also includes access to the non-federal entity's personnel for the purpose of interview and discussion related to such documents.

No federal awarding agency may place restrictions on the non-federal entity that limit public access to the records of the non-federal entity pertinent to a federal award, except for protected personally identifiable information (PII) or in other specific situations identified in 2 C.F.R. 200.338. Unless required by federal, state, local, and tribal statute, non-federal entities are not required to permit public access to their records. The non-federal entity's records provided to a federal agency generally will be subject to Freedom of Information Act (FOIA) and applicable exemptions.

### **6. Remedies for Noncompliance (2 C.F.R. 200.339 through 200.343)**

Sections 2 C.F.R. 200.339 through 200.343 of the Uniform Guidance set forth actions that may be taken for noncompliance. Recovery Program Participants must ensure they comply with federal statutes and regulations and the terms and conditions specific to their federal award.

### **7. Cost Principles (2 C.F.R. 200, Subpart E)**

The Uniform Guidance sets forth basic conditions, or cost principles, for determining whether costs are allowable under a federal award. In general, an allowable cost must be: (1) reasonable, (2) allocable, and (3) consistently treated.

**Reasonable:** A cost is reasonable if the nature of the



goods or services and the price paid for the goods and services reflect the action that a prudent person would have taken given the circumstances at the time the decision to incur the cost was made.

**Allocable:** A cost is allocable if the goods or services involved can be directly charged or assigned to the award based on the benefit provided.

**Consistently treated:** Costs may be direct or indirect. In general, a direct cost is an expense for an item or service bought specifically and entirely for the project, whereas an indirect cost is an expense for a good or service that benefits more than one project or purpose (e.g., facilities, administrative costs). Non-federal entities must ensure that direct and indirect costs are treated consistently in accordance with the Uniform Guidance.

Allowable costs must also conform to any limitations or exclusions in the award as to types or amounts, not be used to meet cost sharing obligations of another federal award, and be adequately documented. Sections 200.420 through 200.476 of the Uniform Guidance discuss specific cost categories. These sections cover a wide range of costs and provide guidance on determining allowable and unallowable costs.

The description of allowable costs above reflects a summary of the requirements outlined in the Uniform Guidance. Recovery Program Participants subject to the Uniform Guidance must carefully review the cost principles, understand the specific requirements applicable to their awards, including any award-specific modifications, and ensure compliance with all relevant regulations.

## **B. OTHER FEDERAL AND STATE REQUIREMENTS**

Recovery Program Participants may also be required to comply with the following state and federal regulations, among others.

### ***1. Federal False Claims Act (31 U.S.C. 3729 through 3733)***

The federal False Claims Act allows the federal government to pursue perpetrators of fraud, e.g., individuals who knowingly submitted a false claim to the government. It also allows individuals to bring “whistleblower” lawsuits on behalf of the government against those that have defrauded the government. Private citizens who successfully bring False Claims Act claims, or “qui tam” suits, may receive a portion of the government’s recovery. Penalties for filing false claims are substantial and may be up to three times the actual loss, plus civil monetary penalties up to \$11,000 per false claim. Violations of the False Claims Act are punishable by prison terms up to five years and substantial criminal fines.

### ***2. Statutes and Regulations Prohibiting Discrimination***

New Jersey’s use of federal financial assistance requires the State to ensure compliance with substantial civil rights requirements. Consideration must be given to federal laws, including but not limited to, Title VI of the Civil Rights Act of 1964 (“Title VI”), which prohibits discrimination on the grounds of race, color, or national origin; Title VIII of the Civil Rights Act of 1968 (“Fair Housing Act”), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability; Section 504 of the Rehabilita-

tion Act of 1973, which prohibits discrimination on the basis of disability under any program or activity receiving or benefitting from federal assistance; the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance; and Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability in programs made available by state and local governments.

New Jersey state law should also be considered, in particular the New Jersey Law Against Discrimination. *N.J.S.A. 10:5-1 et seq.* and its implementing regulations, *N.J.A.C. 17:27 et seq.* These obligations are especially significant in view of the disproportionately greater impact of COVID-19 on communities of color.

Recovery Program Participants must ensure their compliance with state and federal civil rights laws and should consult with the Office of the Attorney General and the New Jersey Division on Civil Rights, as appropriate, with any questions regarding state or federal civil rights laws.

### ***3. Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government***

Some COVID-19 Recovery Funds or COVID-19 Recovery Programs, particularly those funded with American Rescue Plan Act (ARPA) dollars, may include a requirement to ensure that programs advance shared interests and promote equitable delivery of government benefits and opportunities to underserved communities. These requirements are outlined in [Executive Order 13985](#), Advancing Racial Equity and Support for Underserved Communities through the Federal Government.

### ***4. Office of Management and Budget (OMB) Memoranda M-21-20 and M-20-21***

OMB Memoranda M-21-20 and M-20-21 address transparency, expediency, and public accountability in federal funding and may be applicable to COVID-19 Recovery Funds, depending on the funding source. Recovery Program Participants should review their award terms and conditions and reporting guidance to determine the applicability of these Memoranda.

### ***5. State Record Retention and Maintenance Requirements***

At the state level, Recovery Program Participants should continue to comply with applicable record retention schedules established by the State Records Committee pursuant to the Public Records Law, *N.J.S.A. 47:3- 20 et seq.* as well as the policies set forth in the New Jersey Records Manual, available [here](#).

Pursuant to OSC's regulations at *N.J.A.C. 17:44-2.3* and *3.10*, all "covered entities" and "contracting units" (as defined therein) must either comply with state records retention schedules mentioned above, or, if not applicable, relevant records must be maintained for a period of no less than five years after contract completion and produced upon request. *N.J.A.C. 17:44-2.2* requires that the following language be inserted into contracts with covered entities: "(The contract partner) shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the Office of the State Comptroller upon request."

## ***6. The Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 and Duplication of Benefits***

The Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 (“Stafford Act”) authorizes the federal government to provide assistance to states during declared major disasters and emergencies. The Federal Emergency Management Agency (“FEMA”) coordinates the administration of disaster relief resources and assistance to states. FEMA has extensive rules, policies, and guidance to further define eligibility and procedures for Stafford Act assistance, which can be found generally at 44 C.F.R. Parts 1-362 and at [www.fema.gov](http://www.fema.gov). Recovery Program Participants must be aware of these guidelines and ensure their compliance or this essential funding may be recouped or de-obligated.

***Duplication of Benefits:*** Section 312 of the Stafford Act requires the federal government to ensure that no entity will receive assistance for any loss for which it has received financial assistance from other programs, insurance, or any other source. These requirements apply to all federal agencies administering a disaster recovery program providing financial assistance. Recovery Program Participants must establish and maintain adequate policies and procedures to prevent any duplication of benefits.

Recovery Program Participants should also be aware that duplication of benefits may be prohibited by other federal laws, regulation and guidance, their award terms and conditions, and the Cost Principles set forth in the Uniform Guidance.

# IV. BEST PRACTICES FOR INTERNAL CONTROLS, PROCUREMENT, AND MANAGING FRAUD RISKS

## A. INTERNAL CONTROLS

Internal controls serve as an agency’s first line of defense in safeguarding assets. They are processes performed by an agency on an ongoing basis that provide reasonable assurance that the objectives of the entity will be achieved. The [Green Book](#) (September 2014) serves as the federal government’s guide for implementing internal control procedures. Recovery Program Participants are encouraged to review the Green Book’s framework for internal controls with respect to their use of COVID-19 Recovery Funds and administration of COVID-19 Recovery Programs.

The Green Book identifies five key components of an effective internal control system: (1) control environment, (2) risk assessment, (3) control activities, (4) information/communication, and (5) monitoring. The table below identifies these components and the 17 recognized principles that support their design, implementation, and operation.

Control Environment	Risk Assessment	Control Activities	Information and Communication	Monitoring Activities
<ul style="list-style-type: none"> <li>• Demonstrates commitment to integrity and ethics</li> <li>• Exercises oversight responsibilities</li> <li>• Establishes structure, authority, and responsibility</li> <li>• Demonstrates commitment to competence</li> <li>• Enforces accountability</li> </ul>	<ul style="list-style-type: none"> <li>• Define objectives and risk tolerances</li> <li>• Identifies, analyzes, and responds to risk</li> <li>• Assesses fraud risk</li> <li>• Identifies and analyzes and responds to change</li> </ul>	<ul style="list-style-type: none"> <li>• Designs control activities</li> <li>• Selects and develops general controls for the system</li> <li>• Deploys and implements control activities</li> </ul>	<ul style="list-style-type: none"> <li>• Uses relevant, quality information</li> <li>• Communicates internally</li> <li>• Communicates externally</li> </ul>	<ul style="list-style-type: none"> <li>• Performs ongoing monitoring activities</li> <li>• Evaluates issues and remediates deficiencies</li> </ul>

The five components of an effective internal control system should be used by Recovery Program Participants to guide their use of recovery funds and implementation of recovery programs as follows:

### 1. Control Environment

- Management and the Accountability Officer will be responsible for setting the tone for competency, accountability, ethics, and compliance from the top, and ensuring that the organization has sufficient and capable staff to meet program goals.
- Recovery Program Participants should ensure that sufficient staff is in place to disburse funds properly in accordance with clear and appropriate governing criteria. It is essential that staff is properly trained regarding the parameters of the program, the criteria for eligible use of funds, and the required documentation the agency must receive from a potential subrecipient before it distributes funds to that subrecipient.

### 2. Risk Assessment

- Risk assessment consists of identifying, analyzing, and responding to risks. The potential for fraud should be considered in assessing risks. Types of fraud include fraudulent financial reporting, misappropriation of assets, and corruption. Recovery Program Participants should review and utilize the risk assessment template on [OSC's website](#), as appropriate.
- An agency assesses the significance of a risk by considering the magnitude of impact, likelihood of occurrence, and the nature of the risk.
- Types of risks can include:
  - Internal and external;
  - Changes in operating style;

- New personnel;
- New or enhanced information technology systems;
- New programs; and
- New laws and regulations.

- To mitigate these and other risks, the Recovery Program Participants and Accountability Officers should assess risk on an ongoing basis, as lessons are learned in the course of implementing a program. This includes, but is not limited to:
  - Thorough review of existing internal controls and strengthening where necessary;
  - Review of prior audits (internal and/or external) and any resolution of audit findings;
  - Development of strategies for mitigating risk;
  - Assessment of agency capacity and staff's ability and expertise in managing and overseeing the funds. If necessary, consideration should be given to redeployment of resources as necessary; and
  - Performance of existing internal audit functions, and capacity of internal audit units, if any.

### 3. Control Activities

- Control activities consist of the specific policies and procedures that are put in place to mitigate the risk of error, noncompliance, and fraud. They are designed to ensure management directives are carried out, and should occur throughout the organization at all levels and in all functions.
- Some examples of control activities include:
  - Maintaining physical control of assets to minimize loss or misuse, e.g., use of passwords,



locks, data encryption, and management authorization for assets (cash, accounting records, equipment) and computer programs/networks;

- Ensuring backup of computer records and maintaining a disaster recovery plan;
- Segregating duties to guard against any one person performing incompatible duties (e.g., separate operations from related record keeping);
- Delegating authority of approved activities from management to a department or employee;
- Enhancing accountability through approval, verification, and reconciliation;
- Retaining documentation of all relevant transactions; and
- Storing and retaining documents and records for the requisite period of time.

#### **4. Information and Communication**

- Information and communication involve the internal and external communication of quality information so that agency objectives can be met.
- Recovery Program Participants must ensure that management clearly communicates program guidelines and requirements to staff at all relevant levels, to ensure consistent messages and effective program administration.
- Recovery Program Participants must clearly communicate program guidelines and requirements to sub-recipients and update such guidance, if necessary, to respond to new information.
- Recovery Program Participants should have a method in place to field and promptly respond to questions from the public about programs, guidelines, eligibility, etc.

- Recovery Program Participants must ensure prompt and clear communication between the Accountability Officer, OSC and GDRO.

#### **5. Monitoring Activities**

- Monitoring involves reviewing the internal control system and results and taking steps to remediate deficiencies on a timely basis.
- Recovery Program Participants and Accountability Officers should monitor programs, sub-recipients and subgrantees in order to accurately track use of the funding and apply lessons learned to ensure the most efficient use of the funding.
- Monitoring programs should be designed to test for inconsistencies, duplication, errors, policy violations, missing approvals, incomplete data, dollar or volume limit errors, or other possible breakdowns in internal controls. Monitoring techniques may include sampling protocols that permit staff to identify and review variations from an established baseline. Effective monitoring thus requires timely receipt of accurate financial records and performance reports and the ability to assess whether programs are achieving their goals and objectives.
- Recovery Program Participants should also consider conducting real-time audits of the disbursement of funds, as well as performance audits, in order to determine if the spending achieved the desired outcome.

In addition to the above components of internal controls, documentation is also a necessary part of an effective internal control program. Documentation is particularly crucial with respect to COVID-19 funding, as state and federal auditors

and oversight bodies, as well as the public, will want assurances that this funding has been disbursed appropriately.

- Financial transactions and interactions with subrecipients, contractors, or vendors should be appropriately documented in order for a Recovery Program Participant to justify any spending.
- Program disbursements should be supported by documentation setting forth the guidelines utilized in the distribution of funds and the reason the funds were appropriately disbursed to the receiving party.
- Any third-party vendors or contractors utilized must be the subject of oversight by a Recovery Program Participant and any monies paid to a vendor/contractor should be supported by appropriate documentation.
- Invoices submitted by vendors/contractors should be reviewed for thoroughness prior to payment. All payments should be made in accordance with established policies for payments to vendors/contracts.

## **B. PROCUREMENT**

The public contracting process in New Jersey is established by multiple regulations and statutes. Recovery Program Participants must not only comply with state requirements but must also ensure that their procurement complies with federal standards.

Set forth below is a non-exhaustive list of procurement best practices that Recovery Program Participants should take into consideration. In addition to these best practices, Recovery Program Participants should review OSC's [training presentation and ma-](#)

[terials](#).

### **1. Compliance with the Uniform Guidance**

As noted earlier in this Plan, if applicable, a state procuring property and services under a federal award must follow the same policies and procedures it uses for procurements from its non-federal funds. 2 C.F.R. 200.317, 200.322 and 200.326. All other non-federal entities, including subrecipients of a state, must follow the procurement standards set forth in 2 C.F.R. 200.318 through 200.326. Recovery Program Participants should consult with their legal counsel, if necessary, to ensure their procurement properly addresses these standards and is compliant with any special terms associated with its use of particular COVID-19 Recovery Funds as set forth in their award terms and conditions or other relevant federal guidance.

### **2. Encourage open competition**

Open competition among bidders maximizes the public benefit and guards against favoritism and corruption in public contracting. While balancing the need for efficiency, Recovery Program Participants should seek as expansive a pool of potential bidders as possible under the circumstances. This can be done through public notice and advertisement as well as posting a notice on the agency's website.

Because of the short deadlines associated with the expenditure of COVID-19 Recovery Funds, Recovery Program Participants are encouraged to conduct a thorough search of state contracts to determine whether the required good or service is available under an existing state contract. Such purchases would eliminate the need to conduct a competitive process and any delays that may be associated with that process.

While limited "emergency" exceptions to the re-

quirements for public advertisement exist, these should be used only when public exigency requires the immediate delivery of the goods or performance of the service due to life, safety, or health emergencies. The exception should be used only when there is insufficient time to engage in a competitive solicitation. In addition, the duration of the contract should be just long enough to address the emergency. Proper documentation must be maintained to justify the proper use of the exception.

### **3. Draft a clear scope of work**

The scope of work should be clear and unambiguous and must disclose to potential bidders the criteria that will be used to award the contract. A good scope of work will include, at a minimum, the following elements: (a) the contract term and any options for renewal or extension in accordance with applicable laws and regulations; (b) clear outcome-based contract deliverables; (c) a specific description of the goods to be delivered or services and/or tasks to be performed; (d) contract milestones, schedules, and timelines; (e) any reporting requirements expected of the contractor, if applicable; and (f) details related to contract management and administration, i.e., when payment will occur, the change order process, any penalties or sanctions for failure to perform in accordance with the contract, etc.

### **4. Determine the estimated cost of the contract**

Engaging in a thorough cost estimation process prior to bidding a public contract is an effective method for gauging the reasonableness of a bidder's offer and ensuring that a bidder has a complete understanding of the work to be performed. In addition, Recovery Program Participants must also ensure that they are in compliance with the cost principles in 2 C.F.R. 200.400 through 200.474, including ensuring that costs are reasonable, as defined in 2 C.F.R. 200.404.

### **5. Awarding the contract**

In New Jersey, the basis for a contract award depends on the type of contract being bid (e.g., construction vs. goods vs. professional services) and the type of entity procuring the contract (e.g., a state agency that procures goods and services through the Division of Purchase and Property within the Department of the Treasury versus a state entity with its own procurement authority). The method of award and evaluation criteria for the award must be reasonable and clearly established and communicated to bidders *prior* to contract award.

### **6. Limit the use of sole source, brand name, or proprietary specifications.**

The use of sole source, brand name, or proprietary specifications can limit competition, and in some cases, steer a public contract toward a particular bidder. As such, their use is discouraged at the state level, and prohibited at the local level. Recovery Program Participants must also take care that the scope of work and specifications are not crafted in such a specific or technical manner that they deter potential bidders or provide a particular bidder with an unfair advantage.

### **7. State and federal contracting forms and other requirements.**

All Recovery Program Participants must ensure that bid documents contain all applicable state and federal contract language (e.g., OSC document retention language; [Executive Order 271](#) COVID-19 vaccination and testing clauses; Prevailing Wage Act; New Jersey Affirmative Action/Equal Employment Opportunity (EEO) language and requirements; 2 C.F.R. Part 200, Appendix II; etc.) and that their contracts comply with other applicable state and federal contract requirements (e.g., Business Registration, Prompt Payment Act, Statement of Corporate Own-

ership, Disclosure of Investment Activities in Iran, [Executive Order 271](#), etc.). OSC's website includes [resources and materials](#) with references to the state and federal requirements to be considered.

## 8. Compliance with New Jersey Pay-to-Play Law

Pursuant to *N.J.S.A. 19:44A-20.22*, on March 22, 2020, the State Treasurer determined that the emergency declared pursuant to Executive Order 103 required the immediate delivery of goods and the performance of services, and therefore declared the requirements of *N.J.S.A. 19:44A-20.13* through 20.25 ("Pay-to-Play" law) not applicable to such contracts. The State Treasurer's memo is available [here](#). This limited exception is available for public exigency contracts related to COVID-19. For many contracts, this exception will not apply. This means that state departments, agencies, state colleges, and independent authorities are prohibited from entering into a contract valued at over \$17,500 if, during the 18-month period preceding contract negotiations, the vendor has made a reportable contribution in excess of \$300. Recovery Program Participants should consult Public Law 2005, Chapter 51 & Executive Order 117 (2008, Corzine) and the resources available [here](#) to ensure their compliance.

## C. MANAGING FRAUD RISKS

Fraud poses a significant risk to the integrity of government programs and erodes public trust in government. Each Recovery Program Participant, along with their Accountability Officer, has a responsibility to ensure program integrity. Recovery Program Participants and their Accountability Officers should take a strategic approach to managing improper

payments and risks, including fraud. The GAO has provided an instructive framework for managing fraud risks in federal programs, which is illustrated below. The full report is available [here](#).

This framework includes: (1) a commitment to combatting fraud by creating an organizational culture and structure focused on fraud risk management; (2) regular fraud risk assessments; (3) the design and implementation of fraud mitigation strategies; and (4) evaluating resulting outcomes using a risk-based approach and adapting to improve fraud risk management.

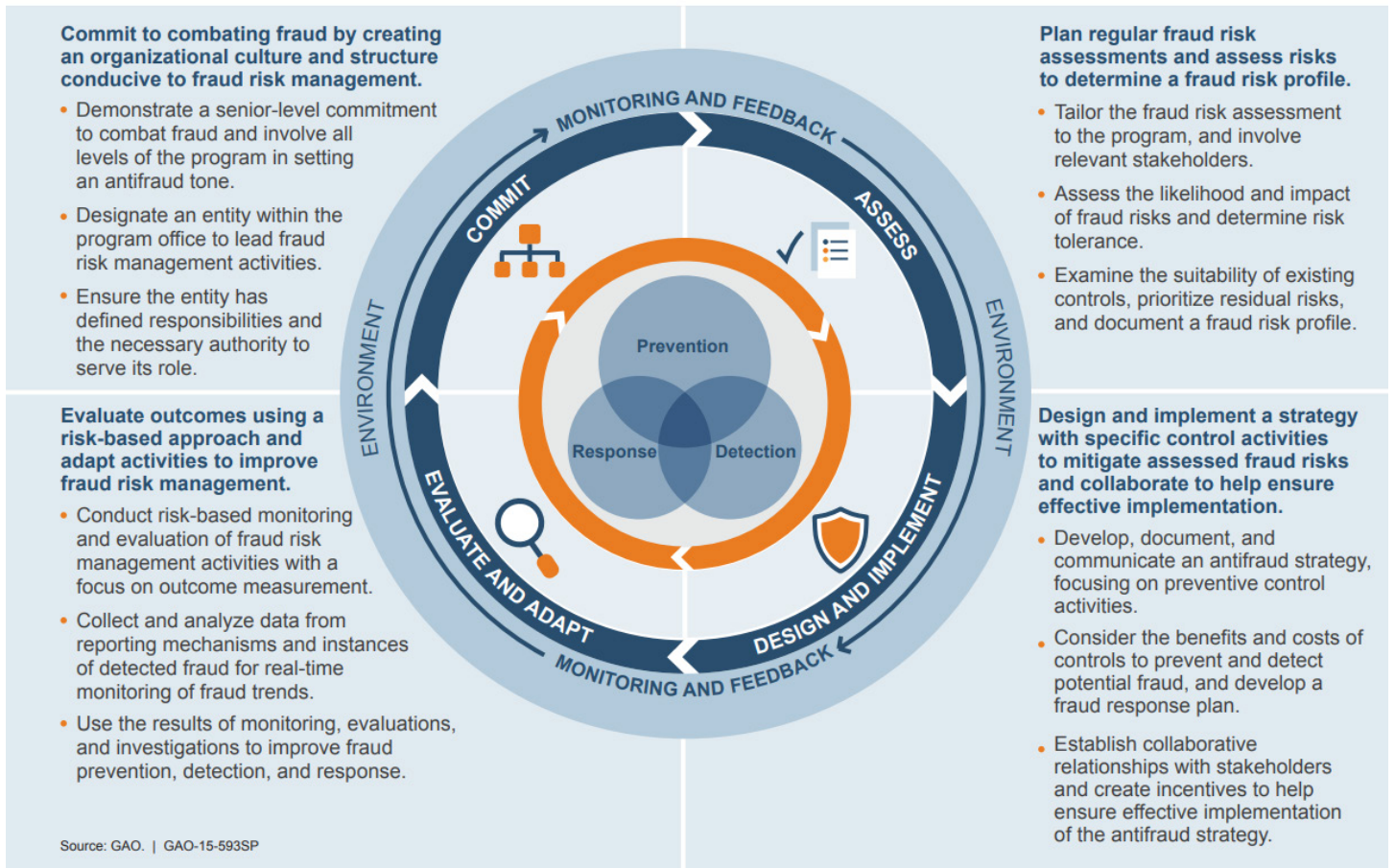
For COVID-19 Recovery Funds and COVID-19 Recovery Programs, Recovery Program Participants and their Accountability Officers should consider the following factors, as well as any other factors specific to their specific program, organization, or funding source.

### 1. Commitment to Combatting Fraud

Management must set the tone in program integrity and antifraud approach and involve all levels of personnel in these efforts. A commitment to combatting fraud may include a review of the internal units or individuals tasked with program integrity functions to determining whether sufficient, competent staff is allocated to these efforts, or whether additional personnel can be re-allocated to assist, while keeping in mind budgetary constraints. The entity should develop a strategic plan to combat fraud, prioritizing high-risk areas. Program staff should be trained on the importance of monitoring for potential waste, fraud, and abuse and the consequences for any employee who engages in inappropriate conduct.



## The Fraud Risk Management Framework and Selected Leading Practices



## 2. Risk Assessments

Factors may include the amount of money being disbursed to a particular category of subrecipient; whether state or federal guidelines provide sufficient guardrails for such funding (i.e., discretionary vs. restrictive), organizational culture; prior audits and audit findings, lessons learned from prior disasters, organizational capacity and expertise, subrecipient internal control weaknesses, technological capacity and potentially outdated financial management systems, barriers to reporting, and input from the individuals/unit that will be disbursing funds or admin-

istering the program. Recovery Program Participants should review and utilize the risk assessment template on [OSC's website](#), as appropriate.

## 2. Design and Implement Fraud Mitigation Strategies

Recovery Program Participants should focus on preventative control activities, fraud indicators and detection, and a fraud response plan. Recovery Program Participants should be aware of the following potential fraud indicators: data mismatches, unsupported or unauthorized transactions, missing or altered documents, significant related-party transactions, inad-



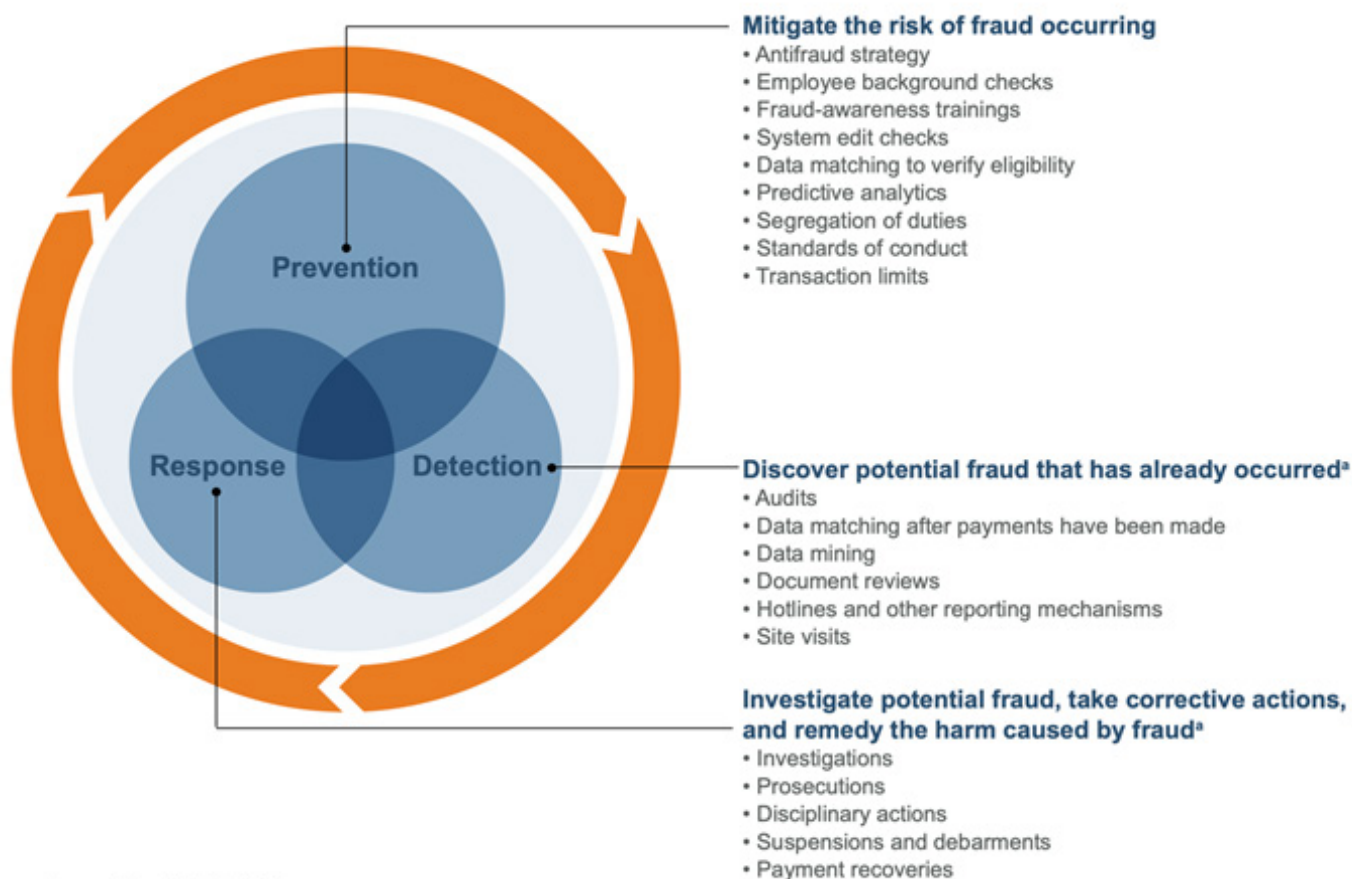
equate or absent internal controls, and insufficient oversight of third-party vendors. Preventative control activities to prevent and detect fraud might include: data analytics, which could include data matching activities or identification of outliers, fraud awareness campaigns, and reporting mechanisms for suspected fraud (e.g., hotline). Recovery Program Participants should have a plan for responding to identified instances of fraud and ensuring a prompt and consistent response, with referrals to the Taskforce, Office of the Attorney General, or law enforcement, as applicable.

#### 4. Evaluating Outcomes

Utilize the results of monitoring, audits, evaluations, and any investigations conducted to enhance prevention and detection of waste, fraud, and abuse.

Accountability Officers should immediately report to OSC and the Office of the Attorney General any incidents of suspected fraud in the disbursement of COVID-19 Recovery Funds.

### Examples of Controls and Activities to Prevent, Detect, and Respond to Fraud



Source: GAO. | GAO-15-593SP

Source: GAO's *A Framework for Managing Fraud Risk in Federal Program*

## **VI. CONCLUSION**

Recovery Program Participants must be aware of all applicable state and federal requirements when disbursing COVID-19 Recovery Funds or administering COVID-19 Recovery Programs. Failure to adhere to applicable state and federal guidelines could result in money being clawed back by the federal government. It could also result in adverse findings by OSC and other oversight bodies. Most importantly, compliance is necessary to ensure that vital public funding is used for proper purposes to aid residents, businesses, and governments in the State of New Jersey in our joint effort to recover from the pandemic.

# APPENDIX

- [EO 166](#)
- [GDRO COVID-19 Oversight website](#)
- [OSC COVID-19 Resources](#)
- [Uniform Guidance](#)
- [GAO's Green Book](#)
- [GAO A Framework for Managing Fraud Risks in Federal Programs](#)
- [Pandemic Response Accountability Committee \(PRAC\) website](#)

# NOTICE OF EXECUTIVE ORDER 166 REQUIREMENT FOR POSTING OF WINNING PROPOSAL AND CONTRACT DOCUMENTS

Principal state departments, agencies, and independent state authorities must include the following notice in any solicitation:

Pursuant to Executive Order No. 166, signed by Governor Murphy on July 17, 2020, the Office of the State Comptroller (“OSC”) is required to make all approved state contracts for the allocation and expenditure of COVID-19 Recovery Funds available to the public by posting such contracts on an appropriate state website. Such contracts will be posted on the New Jersey transparency website developed by the Governor’s Disaster Recovery Office (“GDRO Transparency website”).

The contract resulting from this [RFP/RFQ] is subject to the requirements of Executive Order No. 166. Accordingly, the OSC will post a copy of the contract, including the [RFP/RFQ], the winning bidder’s proposal and other related contract documents for the above contract on the GDRO Transparency website.

In submitting its proposal, a bidder/proposer may designate specific information as not subject to disclosure. However, such bidder must have a good faith legal or factual basis to assert that such designated portions of its proposal: (i) are proprietary and confidential financial or commercial information or trade secrets; or (ii) must not be disclosed to protect the personal privacy of an identified individual. The location in the proposal of any such designation should be clearly stated in a cover letter, and a redacted copy of the proposal should be provided. A Bidder’s/Proposer’s failure to designate such information as confidential in submitting a bid/proposal shall result in waiver of such claim.

The State reserves the right to make the determination regarding what is proprietary or confidential and will advise the winning bidder/proposer accordingly. The State will not honor any attempt by a winning bidder/proposer to designate its entire proposal as proprietary or confidential and will not honor a claim of copyright protection for an entire proposal. In the event of any challenge to the winning bidder’s/proposer’s assertion of confidentiality with which the State does not concur, the bidder/proposer shall be solely responsible for defending its designation.





State of New Jersey, COVID-19  
Compliance and Oversight Taskforce